TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1941

No. 100

ILLINOIS NATURAL GAS COMPANY, APPELLANT,

vs.

CENTRAL ILLINOIS PUBLIC SERVICE COMPANY AND ILLINOIS COMMERCE COMMISSION

APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS

FILED MAY 22, 1941.

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[fol. 1] **IN SUPREME COURT OF ILLINOIS**

Be It Remembered, that, to-wit: on the first day of November, 1940, the same being one of the days in vacation after the term of Court aforesaid, the record of the proceedings of the circuit court of Coles County was filed by the Illinois Natural Gas Company, appellant, in the office of the Clerk of the Supreme Court of Illinois, in re:

No. 25992

CENTRAL ILLINOIS PUBLIC SERVICE COMPANY, et al., Appellees,

vs.

ILLINOIS NATURAL GAS COMPANY, Appellant

Of which pages 16 to 28, both inclusive, of the printed Rates, Rules and Regulations for natural gas service filed by the Illinois Natural Gas Company with the Illinois Commerce Commission, issued June 30, 1938, as appears at Item 182 of the original Record now on file in the Supreme Court of Illinois are in the words and figures following, to-wit:

ILLINOIS NATURAL GAS COMPANY

SCHEDULE OF RATES

FOR

GAS SERVICE

RATE NO. 3-B

OPTIONAL WHOLESALE NATURAL GAS SERVICE TO UTILITIES

Applying to the

Territory Served by the Company in Illinois

Issued June 30, 1938 **Effective June 30, 1938**

Issued by B. R. BAY, Vice-President

Kansas City, Missouri.

Applies To Territory Served In Illinois (See Availability Clause)

RATE NO. 3-B—OPTIONAL WHOLESALE NATURAL GAS SERVICE TO UTILITIES

AVAILABILITY

Any properly qualified utility (hereinafter referred to as the Utility) owning a gas distributing plant in the State of Illinois, together with the necessary franchises, permits, rights, grants, etc., requisite to the distribution and sale of gas, and having a pipe line connection with the pipe line system of Illinois Natural Gas Company (hereinafter referred to as the Company), after establishing and during the period of continuance of a promotional form of retail rate under which its house heating customers may purchase natural gas, either at a net rate not exceeding five and one-half (5½) cents per therm (100,000 B.t.u.) for monthly consumption in excess of thirty (30) therms, or at a net rate not exceeding five (5) cents per therm for monthly consumption in excess of fifty (50) therms, may at its option purchase natural gas hereunder, for resale as such within the area defined by its franchises, at the rates and subject to the terms, conditions and limitations set forth herein. The exercise of such option by the Utility shall be for a minimum period of one year and shall be in writing, signed by a proper officer of the Utility, addressed and forwarded by registered mail to the principal office of the Company.

RATE

Capacity Charge:

The capacity charge shall be based on the billing demand, determined as hereinafter set forth, and shall be computed by applying thereto the following rates:

$ .55 per 100 cubic feet of billing demand, for the first 40 cubic feet, or part thereof, per customer;
$ .40 per 100 cubic feet of billing demand, for the next 40 cubic feet, or part thereof, per customer;
$ .25 per 100 cubic feet of billing demand, for all in excess of 80 cubic feet per customer.

Commodity Charge:

The commodity charge shall be based on the total quantity of gas delivered hereunder during the monthly billing period and shall be computed by applying thereto the following rates:

$ .016 per 100 cubic feet, for the first 4,000 cubic feet, or part thereof, per customer;
$ .014 per 100 cubic feet, for the next 4,000 cubic feet, or part thereof, per customer;
$ .012 per 100 cubic feet, for all in excess of 8,000 cubic feet per customer.

RATE

Capacity Charge:

The capacity charge shall be based on the billing demand, determined as hereinafter set forth, and shall be computed by applying thereto the following rates:

$ .55 per 100 cubic feet of billing demand, for the first 40 cubic feet, or part thereof, per customer;
$ .40 per 100 cubic feet of billing demand, for the next 40 cubic feet, or part thereof, per customer;
$ .25 per 100 cubic feet of billing demand, for all in excess of 80 cubic feet per customer.

Commodity Charge:

The commodity charge shall be based on the total quantity of gas delivered hereunder during the monthly billing period and shall be computed by applying thereto the following rates:

$ .016 per 100 cubic feet, for the first 4,000 cubic feet, or part thereof, per customer;
$ .014 per 100 cubic feet, for the next 4,000 cubic feet, or part thereof, per customer;
$ .012 per 100 cubic feet, for all in excess of 8,000 cubic feet per customer.

DETERMINATION OF BILLING DEMAND

The Billing Demand shall equal the average quantity of gas delivered by the Company to the Utility during a twenty-four (24) hour period included in the billing month during which the greatest quantity of gas has been delivered by the Company to the Utility subsequent to the initial delivery of natural gas by the Company to the Utility under this schedule and/or under any former schedule or contract, and prior to the end of the current billing month, and shall be determined by dividing the total quantity of gas delivered during such billing month of greatest delivery by the number of twenty-four (24) hour days included in said billing month.

PROVIDED, HOWEVER, THAT

If the aggregate consumption of gas of all of the Utility's "Large Industrial Customers" for whom gas is purchased hereunder shall be less in the aggregate for the twenty-four (24) hour period of average delivery by Company to Utility during November of any year than during the twenty-four (24) hour period when the billing demand has theretofore been established,

Then and in that event the billing demand shall be reduced for such month of November and thereafter until a greater billing demand is established, as herein provided, such reduction to be in an amount equal to the amount of said decreased consumption. However, in no event shall the new billing demand thus established be less than that for the twenty-four (24) hour period of average delivery by the Company to the Utility during such November.

The term "Large Industrial Customers" as used herein shall be construed to mean those who have used in excess of one hundred thousand (100,000) cubic feet of gas during the twenty-four (24) hour periods herein referred to.

Issued June 30, 1938 Effective June 30, 1938

Issued by B. R. BAY, Vice-President
Kansas City, Missouri.

Applies To Territory Served In Illinois (See Availabiiity Clause)

RATE NO. 3-B—OPTIONAL WHOLESALE NATURAL GAS SERVICE TO UTILITIES

Deliveries of gas during the period from April 1st to October 31st, inclusive, in any year shall not establish a billing demand higher than the billing demand established prior to such period. This provision shall not apply to the delivery of gas to any Utility during the first such period in which it purchases gas from the Company.

DETERMINATION OF NUMBER OF CUSTOMERS

The number of customers for billing purposes shall be the average number of the Utility's meters in use during each billing month, and shall be determined by taking the total number of meters in use on the last day of the current billing month and adding thereto the total number of meters in use on the last day of the previous billing month and dividing the sum thereof by two.

On or before the 5th day of each month the Utility shall furnish the Company with a statement of the number of meters in use on the last day of the preceding month, which shall be considered the current billing month. Wherever a customer of the Utility is served through two or more meters, the readings of which are combined for billing purposes by the Utility, such group of meters shall be considered as one meter.

DEFINITION OF BILLING MONTH

The billing month shall be the calendar month unless otherwise agreed to between the parties.

TERMS AND CONDITIONS

Sales and deliveries of gas to the Utility hereunder shall be governed by the Company's "Rules, Regulations and Conditions of Service For Wholesale Natural Gas Service to Utilities," on file with the Illinois Commerce Commission under Ill. C. C. No. 1, sheets 25 to 28 inclusive.

ILLINOIS NATURAL GAS COMPANY

SCHEDULE OF RATES

FOR

GAS SERVICE

RATE NO. 3-D
OPTIONAL RATE FOR INTERRUPTIBLE SERVICE
TO UTILITIES

Applying to the
Territory Served by the Company in Illinois

Issued March 10, 1939 **Effective April 10, 1939**

Issued by G. J. NEUNER, Vice-President
Kansas City, Missouri.

Applies To Territory Served In Illinois (See Availability Clause)

RATE NO. 3-D—OPTIONAL RATE FOR INTERRUPTIBLE SERVICE TO UTILITIES

AVAILABILITY

Any properly qualified utility (hereinafter referred to as the Utility) owning a gas distributing plant in the State of Illinois, together with the necessary franchises, permits, grants, etc., requisite to the distribution and sale of gas, and having a pipe line connection with the pipe line system of Illinois Natural Gas Company (hereinafter referred to as the Company) may, at its option, *until May 1, 1939*, purchase natural gas hereunder for resale as such, within the area defined by its franchises, to any customer whose monthly consumption is one hundred thousand (100,000) cubic feet or more. *After April 30, 1939*, the Utility may, at its option, purchase gas hereunder for resale to:

1. *Any customer whose gas requirements were purchased hereunder prior to May 1, 1939.*

2. Any customer whose monthly consumption of gas is in excess of one hundred thousand (100,000) cubic feet *and whose total use of gas during the months of January and February, combined, constitutes less than thirty per cent (30%) of his total annual requirements of gas.*

Subject to the limitations herein set forth, the exercise of such option by the Utility shall be evidenced by written notice signed by a proper officer of the Utility addressed and forwarded by registered mail to the principal office of the Company and shall be for the period of service to such customer or until this schedule is superseded by another rate schedule.

RATE

40c per 1,000 cubic feet for the first 100,000 cubic feet of monthly consumption per customer;
25.5c per 1,000 cubic feet for the next 900,000 cubic feet of monthly consumption per customer;
20.5c per 1,000 cubic feet for the next 1,000,000 cubic feet of monthly consumption per customer;
18c per 1,000 cubic feet for the next 40,000,000 cubic feet of monthly consumption per customer;
17.5c per 1,000 cubic feet for all gas in excess of 42,000,000 cubic feet of monthly consumption per customer.

TERMS AND CONDITIONS

The Company reserves the right to discontinue this option to Utilities with respect to additional customers upon sixty days notice if in its judgment additional gas or line capacity is not available.

Deliveries hereunder shall be subject to curtailment or interruption when such gas is needed to meet the requirements of customers receiving service under classifications contemplating an uninterruptible supply of gas, either directly or indirectly, from the pipe line system of the Company.

Sales and deliveries of gas to the Utility hereunder shall be governed by the Company's "Rules, Regulations and Conditions of Service For Wholesale Natural Gas Service to Utilities," on file with the Illinois Commerce Commission under Ill. C. C. No. 1, sheets 25 to 28, inclusive, except where the terms and conditions thereof are inconsistent or at variance with the terms and conditions hereof.

ILLINOIS NATURAL GAS COMPANY

SCHEDULE OF RATES

FOR

GAS SERVICE

RATE NO. 3-E

OPTIONAL WHOLESALE NATURAL GAS SERVICE TO UTILITIES

Applying to the

Territory Served by the Company in Illinois

Issued June 30, 1938 **Effective June 30, 1938**

Issued by B. R. BAY, Vice-President
Kansas City, Missouri.

Applies To Territory Served In Illinois (See Availability Clause)

RATE NO. 3-E—OPTIONAL WHOLESALE NATURAL GAS SERVICE TO UTILITIES

AVAILABILITY

Any properly qualified Utility (hereinafter referred to as the Utility) owning a gas distributing plant in the State of Illinois, together with the necessary franchises, permits, rights, grants, etc., requisite to the distribution and sale of gas and having a pipe line connection with the pipe line system of Illinois Natural Gas Company (hereinafter referred to as the Company) may at its option purchase natural gas hereunder, for resale as such within the area defined by its franchises, at the rates and subject to the terms, conditions and limitations set forth herein. The exercise of such option by the Utility shall be for a minimum period of one year and shall be in writing, signed by a proper officer of the Utility, addressed and forwarded by registered mail to the principal office of the Company.

RATE

Forty cents (40c) per thousand cubic feet;

PROVIDED, THAT, for gas sold by the Utility when the total delivery to any individual user shall exceed one hundred thousand cubic feet in any month, payment shall be made by the Utility to the Company for all gas sold in such month in excess of one hundred thousand cubic feet to such individual user at the rate of sixteen cents (16c) per thousand cubic feet, which shall be referred to as the "Base Rate," plus one-half of the remainder of such individual user's monthly bill for gas in excess of one hundred thousand cubic feet after deduction of a sum equal to the payment of the full amount of such consumer's monthly consumption in excess of one hundred thousand cubic feet, at the rate of sixteen cents (16c) per thousand cubic feet. Leakage suffered by the Utility in its distributing plants and/or systems shall be paid for at the rate of twenty-five cents (25c) per thousand cubic feet.

PROVIDED, FURTHER, that in no event shall the Utility pay the Company a higher price per thousand cubic feet than forty cents (40c) for any gas delivered hereunder.

PROVIDED, FURTHER, that in the event any properly qualified Utility exercises its option to purchase natural gas hereunder for resale as such to its customers in any city or village served by it, all gas deliveries falling within the 40c per MCF rate provision hereof, shall be paid for at the rate of thirty five cents (35c) per thousand cubic feet for the first year following the initial delivery of natural gas by the company to the utility for resale in said city or village, and for the second year following such initial delivery, shall be paid for at the rate of thirty-seven and one-half cents (37½c) per thousand cubic feet.

TERMS AND CONDITIONS

Sales and deliveries of gas to the Utility hereunder shall be governed by the Company's "Rules, Regulations and Conditions of Service Wholesale Natural Gas Service to Utilities," on file with the Illinois Commerce Commission under Ill. C. C. No. 1, Sheets 25 to 28, inclusive.

ILLINOIS NATURAL GAS COMPANY

SCHEDULE OF RATES

FOR

GAS SERVICE

RATE NO. 3-F
OPTIONAL INDUSTRIAL RATE—INTERRUPTIBLE SERVICE TO UTILITIES

Applying to the
Territory Served by the Company in Illinois

Issued June 30, 1938 **Effective June 30, 1938**

Issued by B. R. BAY, Vice-President
Kansas City, Missouri.

Applies To Territory Served In Illinois (See Availability Clause)

RATE NO. 3-F—OPTIONAL INDUSTRIAL RATE—INTERRUPTIBLE SERVICE TO UTILITIES

AVAILABILITY

Any properly qualified Utility (hereinafter referred to as the Utility) owning a gas distributing plant in the State of Illinois, together with the necessary franchises, permits, rights, grants, etc., requisite to the distribution and sale of gas, having a pipe line connection with the pipe line system of Illinois Natural Gas Company (hereinafter referred to as the Company) may at its option purchase natural gas hereunder during the period ending October 31, 1940, for resale as such within the area defined by its franchises to any industrial customer whose individual monthly consumption is in excess of 1,000 MCF and not seasonal on peak in nature, at the rates and subject to the terms, conditions and limitations set forth herein. The exercise of such option by the Utility shall be for the period of service to such customer, but in no event beyond October 31, 1940, and shall be in writing, signed by a proper officer of the Utility, addressed and forwarded by registered mail to the principal office of the Company.

RATE

40c	per 1,000 cubic feet for the first	100,000 cubic feet of monthly consumption per customer;
30c	per 1,000 cubic feet for the next	900,000 cubic feet of monthly consumption per customer;
20c	per 1,000 cubic feet for the next	1,000,000 cubic feet of monthly consumption per customer;
18c	per 1,000 cubic feet for the next	40,000,000 cubic feet of monthly consumption per customer;
16.5c	per 1,000 cubic feet for all gas in excess of	42,000,000 cubic feet of monthly consumption per customer.

TERMS AND CONDITIONS

The Company reserves the right to discontinue this option to Utilities with respect to additional customers upon sixty days notice if in its judgment additional gas or line capacity is not available.

All gas sold and delivered hereunder is intended solely for resale as industrial fuel and shall not be diverted, sold or used by the Utility for any other purpose.

Deliveries hereunder shall be subject to curtailment or interruption when such gas is needed to meet the requirements of customers receiving service under classifications contemplating an uninterruptible supply of gas, either directly or indirectly, from the pipe line system of the Company.

The term "industrial customer" as used herein is intended to mean any customer of the Utility engaged in a manufacturing process or the generation of power.

Sales and deliveries of gas to the Utility hereunder shall be governed by the Company's "Rules, Regulations and Conditions of Service For Wholesale Natural Gas Service to Utilities," on file with the Illinois Commerce Commission under Ill. C. C. No. 1, sheets 25 to 28, inclusive, except where the terms and conditions thereof are inconsistent and/or at variance with the terms and conditions hereof.

ILLINOIS NATURAL GAS COMPANY

RULES, REGULATIONS AND CONDITIONS OF SERVICE FOR WHOLESALE NATURAL GAS SERVICE TO UTILITIES

Applying to the
Territory Served by the Company in Illinois

Issued June 30, 1938 **Effective June 30, 1938**

Issued by B. R. BAY, Vice-President
Kansas City, Missouri.

Applies To Territory Served In Illinois (See Availability Clause)

RULES, REGULATIONS AND CONDITIONS OF SERVICE WHOLESALE NATURAL GAS SERVICE TO UTILITIES

APPLICATION

The following Rules, Regulations and Conditions of Service apply to all sales of natural gas by Illinois Natural Gas Company (hereinafter called the Company) to any utility company in the State of Illinois (hereinafter called the Utility) under any schedule of rates for natural gas service to utilities filed by the Company with the Illinois Commerce Commission, except to the extent that such rules, regulations and conditions of service may be inconsistent and/or at variance with, and superseded by, the terms and conditions contained in any specific schedule.

POINTS OF DELIVERY

The points of delivery of the natural gas sold hereunder shall be the outlets of the Company's measuring stations situated at the present established points of delivery, or such other points as may be agreed upon between the Company and the Utility. The Company will install, maintain and operate at its own expense meters and metering equipment at each point of delivery, through which meters the gas delivered to the Utility hereunder shall be measured. The Company will also install, operate and maintain at its own expense at or near each point of delivery such regulator stations as may be necessary, and will at all times maintain a pressure adequate to meet the requirements of the Utility's customers, which, however, shall not be greater than fifty (50) pounds gauge pressure per square inch at its measuring stations except by mutual agreement.

All property and equipment installed by either the Company or the Utility in connection with the delivery of gas or otherwise shall remain the property of the party originally installing the same, and may be removed by the owner upon the termination of service.

POINTS OF DELIVERY

The points of delivery of the natural gas sold hereunder shall be the outlets of the Company's measuring stations situated at the present established points of delivery, or such other points as may be agreed upon between the Company and the Utility. The Company will install, maintain and operate at its own expense meters and metering equipment at each point of delivery, through which meters the gas delivered to the Utility hereunder shall be measured. The Company will also install, operate and maintain at its own expense at or near each point of delivery such regulator stations as may be necessary, and will at all times maintain a pressure adequate to meet the requirements of the Utility's customers, which, however, shall not be greater than fifty (50) pounds gauge pressure per square inch at its measuring stations except by mutual agreement.

All property and equipment installed by either the Company or the Utility in connection with the delivery of gas or otherwise shall remain the property of the party originally installing the same, and may be removed by the owner upon the termination of service.

BASIS OF MEASUREMENT

The unit of measurement for the natural gas delivered under this schedule shall be one (1) cubic foot of natural gas at a base temperature of sixty (60) degrees Fahrenheit, and at a base pressure of eight (8) ounces gauge pressure above fourteen and four-tenths (14.4) pounds per square inch absolute pressure. For the purpose of measurement, the natural gas delivered hereunder shall be assumed to obey Boyle's Law and the average absolute (barometric) pressure shall be assumed to be fourteen and four-tenths (14.4) pounds to the square inch, irrespective of the actual elevation or location of the point of delivery above sea level or of variations in such barometric pressure from time to time. For meters of the orifice type, the following factors shall be given due consideration, viz:

(1) For each delivery point at which the average daily delivery over an annual period shall exceed 150,000 cubic feet, the temperature of the natural gas flowing through the meter shall be obtained by the use of a recording thermometer so installed by the Company that it may properly record the temperature of the natural gas flowing through the meter. The average hourly temperature recorded in each twenty-four (24) hour day shall be used in computing measurements. For each delivery point at which the average daily delivery over an annual period shall not exceed 150,000 cubic feet, the Company shall not be required to install a recording thermometer, and, where such installation is not provided, the temperature of the gas for the purpose of measurement shall be assumed to be sixty (60) degrees Fahrenheit.

(2) The specific gravity of the natural gas shall be determined by joint test as often as either the Company or the Utility may require, but at any rate not oftener than twice a month. The method of test used shall be by Edwards' Balance, or by such other method generally recognized as standard as shall be adopted by the Company, with the approval of the Illinois Commerce Commission. The average of such tests shall determine the specific gravity to be used in computation for the measurement of natural gas deliveries until changed by subsequent tests.

METER INSPECTION AND ADJUSTMENTS FOR ERROR

Meters and measuring equipment used to measure gas delivered to the Utility shall be open to the inspection of the Utility at all reasonable times, upon request of the Utility to the Company, but in the presence of the Company's representative. The Company shall test such meters at reasonable intervals, and also whenever requested by, and in the presence of, a representative of the Utility; but the Company shall not be so required to make such tests more frquently than once in any thirty (30) day period. Meter measurements found to be in error more than two (2) per cent shall be corrected and accounts adjusted accordingly, but the period

Applies To Territory Served In Illinois (See Availability Clause)

RULES, REGULATIONS AND CONDITIONS OF SERVICE
WHOLESALE NATURAL GAS SERVICE TO UTILITIES

of adjustment shall not exceed thirty (30) days preceding the test. The provisions of this paragraph shall also be applicable to meters and metering equipment used by the Utility in the measurement of gas delivered to large consumers.

QUALITY OF GAS TO BE DELIVERED HEREUNDER

The natural gas delivered hereunder shall be natural gas as produced in its natural state from the wells, except that (1) the Company may blend with said natural gas the gas coming from the stills of oil refineries or casinghead gasoline extraction plants, or return to said natural gas any substance extracted from it, and the term "natural gas" as used herein shall include natural gas so mixed; and (2) the Company may extract or permit the extraction of any helium content, and/or the natural gas gasoline, and/or any other content from said natural gas, provided such extraction or treatment does not impair the marketability of the natural gas so delivered. Said natural gas shall be merchantable and conform to the standard of purity prescribed by the Illinois Commerce Commission.

ADJUSTMENT FOR VARIATIONS IN HEATING VALUE

The natural gas delivered to the Utility shall have a total heating value of approximately one thousand (1,000) British thermal units per cubic foot. Should the average heating value of the gas delivered in any day be more than one thousand fifty (1,050) or less than nine hundred fifty (950) British thermal units per cubic foot, then for the purpose of and before determining the Utility's billing demand and commodity charge the quantity of such gas shall be increased or decreased, respectively, in the percentage by which the average total heating value of such gas is greater than one thousand fifty (1,050) or less than nine hundred fifty (950) British thermal units per cubic foot.

The Company will maintain without expense to the Utility, calorimeter equipment of standard type for the purpose of determining the total heating value of gas delivered to the Utility. Such equipment shall be maintained at a point on its pipe line system to be determined by the Company. The Utility may at its option and at its own expense install calorimeter equipment for check purposes. The Company's determination of the heating value of gas delivered to the Utility shall be considered correct; provided, however, that if the Utility's determination of heating value differs more than two (2) per cent from the Company's determination thereof and said difference affects payments for gas delivered to the Utility, the Company and the Utility shall mutually agree as to the correct heating value of such gas, and, failing so to agree within ten (10) days, either the Company or the Utility shall thereupon have the right to refer the matter to an engineer of the Illinois Commerce Commission for determination, whose decision shall be final for the period in which the dispute arises. Upon final determination of the correct heating value, accounts shall be adjusted accordingly. All charts and records in connection with the measurement and determination of the heating value of gas delivered hereunder shall be preserved by the parties for a period of at least three (3) years, and each party's current charts and records shall be forwarded to the other upon request, but not oftener than twice each month, and, when so forwarded, shall be returned within ten (10) days after the receipt thereof.

ADJUSTMENT FOR VARIATIONS IN HEATING VALUE

The natural gas delivered to the Utility shall have a total heating value of approximately one thousand (1,000) British thermal units per cubic foot. Should the average heating value of the gas delivered in any day be more than one thousand fifty (1,050) or less than nine hundred fifty (950) British thermal units per cubic foot, then for the purpose of and before determining the Utility's billing demand and commodity charge the quantity of such gas shall be increased or decreased, respectively, in the percentage by which the average total heating value of such gas is greater than one thousand fifty (1,050) or less than nine hundred fifty (950) British thermal units per cubic foot.

The Company will maintain without expense to the Utility, calorimeter equipment of standard type for the purpose of determining the total heating value of gas delivered to the Utility. Such equipment shall be maintained at a point on its pipe line system to be determined by the Company. The Utility may at its option and at its own expense install calorimeter equipment for check purposes. The Company's determination of the heating value of gas delivered to the Utility shall be considered correct; provided, however, that if the Utility's determination of heating value differs more than two (2) per cent from the Company's determination thereof and said difference affects payments for gas delivered to the Utility, the Company and the Utility shall mutually agree as to the correct heating value of such gas, and, failing so to agree within ten (10) days, either the Company or the Utility shall thereupon have the right to refer the matter to an engineer of the Illinois Commerce Commission for determination, whose decision shall be final for the period in which the dispute arises. Upon final determination of the correct heating value, accounts shall be adjusted accordingly. All charts and records in connection with the measurement and determination of the heating value of gas delivered hereunder shall be preserved by the parties for a period of at least three (3) years, and each party's current charts and records shall be forwarded to the other upon request, but not oftener than twice each month, and, when so forwarded, shall be returned within ten (10) days after the receipt thereof.

MONTHLY BILLING AND PAYMENT FOR GAS DELIVERED

The Company shall furnish the Utility on or before the fifth day of each calendar month a statement showing the quantity of gas delivered through each of its measuring stations to the Utility. When information necessary for billing purposes is in the control of the Utility, the Utility shall furnish such information to the Company on or before the fifth day of each month for the monthly billing period next preceding. Payment by the Utility to the Company for all gas delivered shall be made monthly in amounts determined in accordance with the schedule of rates under which the Utility purchases gas. The Company shall render bills on or before the fifteenth day of each month for all gas delivered in the preceding month, and the Utility shall pay such bills on or before the twentieth day of the month in which the same are rendered.

AUDIT OF UTILITY'S RECORDS

The Company, upon written request of the Utility, may, but not more than twice in each calendar year, audit the Utility's records, in order to check the number of the Utility's meters for the purpose of verifying any meter statements theretofore furnished by the Utility or for any other purpose affecting payments to be made for gas delivered by the Company to the Utility. Any errors or discrepancies disclosed by any such audit shall be promptly adjusted.

Issued June 30, 1938

Effective June 30, 1938

Issued by B. R. BAY, Vice-President
Kansas City, Missouri.

Applies To Territory Served In Illinois (See Availability Clause)

RULES, REGULATIONS AND CONDITIONS OF SERVICE
WHOLESALE NATURAL GAS SERVICE TO UTILITIES

LARGE VOLUME DELIVERIES OF GAS FOR RESALE TO INDIVIDUAL CUSTOMERS OF THE UTILITY

Where deliveries to the Utility are made under the Company's filed schedule of rates Nos. 3-D and 3-F, for resale to individual customers of the Utility, deliveries of gas to each such individual customer shall be measured separately by the Utility through meters of standard type, and, when necessary, such meters shall be equipped with recording apparatus furnishing a continuous record. If such deliveries to the Utility are made through the city gate meters of the Company, proper deduction of daily and/or monthly quantities of gas sold to the Utility under such rate schedule will be made before computing the monthly bill for the remainder of the gas delivered through such city gate meters.

COPIES OF INDUSTRIAL CONTRACTS

The Utility shall furnish to the Company, for the latter's information, copies of all of its industrial contracts for the sale of gas, and shall confer with the Company before entering into agreements with prospective industrial customers whose requirements are estimated to exceed one hundred thousand (100,000) cubic feet daily during any period from November 1st to March 31st, inclusive, for the purpose of protecting the requirements of all purchasers of gas from the Company and insuring adequacy of supply and line capacity.

PRECEDENCE OF DOMESTIC AND COMMERCIAL CUSTOMERS

The supply and delivery of gas to domestic and commercial customers shall take precedence over the requirements of industrial users, and in the event of temporary interruption in supply from any cause whatsoever, or diminution in supply to a point where all customers cannot be adequately served, or in the event of a lack of sufficient capacity in the Company's pipe lines adequately to serve all users during any period of peak demand, the Utility, upon notice from the Company, shall curtail or discontinue industrial deliveries to customers served by it, and the Company shall also require similar and proportionate curtailment or discontinuance of all other industrial deliveries. All contracts entered into by the Utility with its industrial customers shall contain appropriate provisions for the protection of service to domestic and commercial customers pursuant to the provisions of this paragraph.

RESPONSIBILITY OF THE PARTIES PRIOR TO AND AFTER DELIVERY

The Utility shall have no responsibility whatsoever in respect to gas prior to delivery thereof to it, or be in any way responsible for or on account of anything which may be done, happen or arise with respect to gas prior to such delivery, and the Company shall protect and save harmless the Utility from all claims, suits, damages, acts or things with respect to said gas prior to the delivery thereof.

The Company shall be in no wise responsible for or on account of anything which may be done, happen or arise out of the use of gas delivered to the Utility due to the Utility's handling thereof, and the Utility shall protect and save harmless the Company from all claims, suits, damages, conduct, acts or things arising out of the use of said gas after the delivery thereof.

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The Utility shall furnish to the Company, for the latter's information, copies of all of its industrial contracts for the sale of gas, and shall confer with the Company before entering into agreements with prospective industrial customers whose requirements are estimated to exceed one hundred thousand (100,000) cubic feet daily during any period from November 1st to March 31st, inclusive, for the purpose of protecting the requirements of all purchasers of gas from the Company and insuring adequacy of supply and line capacity.

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The Company shall be in no wise responsible for or on account of anything which may be done, happen or arise out of the use of gas delivered to the Utility due to the Utility's handling thereof, and the Utility shall protect and save harmless the Company from all claims, suits, damages, conduct, acts or things arising out of the use of said gas after the delivery thereof.

FORCE MAJEURE

Neither the Company nor the Utility shall be liable in damages to the other for any act, omission or circumstance occasioned by or in consequence of war, riots, strikes, lockouts, acts of God, accidents, line breakage, floods, storms, washouts, fire, freezing of wells or lines of pipe, diminution or failure of supply, or any other cause or condition, whether of the kind above specified or otherwise, not within the reasonable control of the parties.

NOTICES AND COMMUNICATIONS

All notices, other than those relating to operating matters (which may be communicated by telephone), shall be deemed to have been properly given when forwarded by registered mail addressed to the principal office of the Company or the Utility.

[fols. 16-17] IN CIRCUIT COURT OF COLES COUNTY

STIPULATION RE INTRODUCTION IN EVIDENCE OF RATES, RULES AND REGULATIONS

Mr. Stevens: Could we make it more specific at this time, and have the understanding that either side may refer to or may furnish copies of and have them put into the record if they care to, of such portions as they care to of Sheets Nos. 16 to 28 inclusive of the Illinois Natural Gas Company gas rate schedule, as on file with the Commission?

Mr. Clark: That is perfectly agreeable to us.

[fol. 18] IN CIRCUIT COURT OF COLES COUNTY

OFFER IN EVIDENCE

Mr. Stevens: I think we introduced at the former hearing a copy of the Commission's order in Case No. 26563. I would like to read from the record in that case certain statements made by Vice-Presidents of the Panhandle Eastern Pipeline Company in that proceeding.

Mr. Farrell: What does that proceeding involve?

Mr. Stevens: That involved the transfer of the Illinois Pipeline Company so far as interstate property went, and to the Illinois Natural Gas Company insofar as Illinois property, latterals and other property. It involved the transfer of certificate from the Panhandle Illinois Pipeline Company to the Illinois Natural Gas Company, and the entire matter of the transfer of stock.

These statements relate one of the purposes had in mind by the respective companies in making that splitup of the Panhandle Illinois Pipeline Company property. The following is the language used in addressing the Commission by Mr. Neuner, E. J. Neuner, at that time and now—at that time Vice-President of the Panhandle Eastern Pipeline Company and of the Illinois Pipeline Company, and——

Mr. Farrell: You mean the Illinois Natural Gas Company?

Mr. Stevens: Yes, the Illinois Natural Gas Company and the Panhandle Illinois Pipeline Company. I think he occupied those three positions, and still occupys the position of

Vice-President of the Illinois Natural Gas Company and the Panhandle Eastern Pipeline Company.

[fol. 19] Mr. Clark: He does now, but I am not sure whether he was Vice-President of the Panhandle Eastern Pipeline Company at that time or not. He testified the other day that he did not know the exact time, but approximately two years ago, I believe.

Mr. Stevens: I think he said two years ago, and this proceeding before the Commission began in January of 1938 and closed in June. It is very short. I will read it into the record, if I may.

Mr. Neuner's language, insofar as we care to have it appear in this record is as follows:

"The purpose to be accomplished by the present proceeding is the separation of the property and the business of Panhandle Illinois Pipeline Company to the end that the property and the business, which is purely intrastate and of a local public utility character, will be owned and operated by the Illinois Natural Gas Company, an Illinois corporation, operating as a public utility in this State and that the main line and compressing stations not used, useful or necessary in the conduct of a public utility business be transferred to Panhandle Eastern Pipeline Company, a Delaware Corporation".

Mr. Bay, at that time Vice-President of both of those companies, as I recall, at that time testified as follows:

"Exhibit A, as a whole, is a complete schedule of all of the properties now owned by Panhandle Illinois Pipeline Company and proposed to be transferred to Illinois [fol. 20] Natural Gas Company which are used useful in the conduct of the utility business in the State of Illinois."

Question by Mr. Neuner:

"It is true, Mr. Bay, that Exhibit A attached to that contract is all of the property of Panhandle Illinois Pipeline Company exclusive of the main line and compressor station?"

Answer:

"That is true".

Then:

"I will ask you to state whether or not that schedule includes all of the Certificate of Convenience and Necessity

heretofore granted to Panhandle Illinois or its predecessor in Illinois?"

And the answer was:

"It does."

Then the question:

"So that under this contract the Illinois Natural will own all of the Certificates of Convenience and Necessity now owned by Panhandle Illinois"?

And the answer:

"That is true".

Then the question was asked:

"If and when the plan contemplated is approved by the Commission and the transfer of the property is effected, is it the intention that Illinois Natural file with the Commis- [fol. 21] sion rate schedules, rules and regulations and conditions of service for the rendition of natural gas service both directly and indirectly to customers in Illinois substantially identical with the rate schedules, rules and regulations and conditions of service of Panhandle Illinois now on file with the Commission and at present in effect?"

The answer was:

"That is the intention under this plan".

Then the question is asked.

"The points of delivery where the gas is to be delivered from Panhandle Eastern to Illinois Natural under this proposed contract is fixed at the points of connection of the lateral lines with the main line; is that correct?"

And the answer:

"That is right."

Then the question:

"Is it the intention that the volumes delivered be also measured at those points of connection?"

And the answer:

"In instances, yes; in others, probably no, at this time. However, the general plan contemplates the use of existing meters where they are located at the main pipeline and possibly additional meter installations where there is no such existing points of measurement as time goes on".

Mr. Clark: Mr. Stevens, what was the statement you read—I do not mean to repeat it, but the statement of Mr. Neuner. Was that in an opening statement?

[fols. 22-24] Mr. Stevens: Yes, sir.

Mr. Clark: And he was acting as attorney——

Mr. Stevens: Counsel for all three companies, I think, at that time.

Mr. Clark: I wish to reserve the right, of course, to check those statements against the transcript. I have no objection to the testimony of Mr. Bay, but I do enter an objection as to Mr. Neuner's statement, that it is incompetent, irrelevant and immaterial in this proceeding, and especially as to his statements that the business of the company would be intrastate. I object to that as a conclusion of law and as a matter not in evidence in that particular case. I ask that that part of the record be stricken.

Mr. Farrell: The objection is overruled, and the motion is denied.

[fol. 24-1] IN SUPREME COURT OF ILLINOIS

CENTRAL ILLINOIS PUBLIC SERVICE COMPANY, *et al., Petitioner-Appellees,*

vs.

ILLINOIS NATURAL GAS COMPANY, *Respondent-Appellant.*

In the matter of the application for an order by the Commission directing Respondent to furnish wholesale natural gas service to Petitioner at or near Mattoon, Illinois.

Appeal from: Illinois Commerce Commission No. 27906. Circuit Court of Coles County, No. 2179.

Victor Hemphill, *Judge Presiding*

Abstract of Record—Filed November 9, 1940

Notice of Appeal filed January 25, 1940, to the Circuit Court of Coles County from order of Illinois Commerce Commission entered on November 30, 1939.

Entry of Appearance of Illinois Commerce Commission to Circuit Court of Coles County, Cause No. 2179.

[fol. 24-2] APPLICATION BEFORE COMMISSION

Application filed before Illinois Commerce Commission, May 22, 1939, abstracted as follows:

Central Illinois Public Service Company is a corporation organized and existing under and by virtue of the laws of

the State of Illinois, and is and for some years last past has been engaged, with charter powers so to do, in supplying and distributing natural gas at retail to the public in the cities of Mattoon, Effingham, Paris and Charleston and intermediate communities, all in the State of Illinois, and is in so doing a public utility subject to the jurisdiction of the Commission.

Paris and Charleston are located, respectively, approximately 40 and 12 miles eastwardly from Mattoon, and Effingham is located approximately 30 miles southwardly from Mattoon; that said cities and intermediate communities are, and for some years have been, all interconnected by gas transmission mains of the petitioner, one extending eastwardly from Mattoon to Charleston and Paris, and the other southwardly from Mattoon to Effingham; that the two transmission mains were originally installed by petitioner for the transmission of artificial gas from Mattoon to Charleston and Paris, and from Mattoon to Effingham, from its artificial gas plant at Mattoon, then operated by petitioner as a central plant in order to obtain the economies resulting from centralized manufacture; that the displacement of artificial by natural gas which occurred generally throughout the State in the early years of the present decade led the petitioner to substitute natural for artificial gas in [fol. 24-3] its public utility gas operations in said cities and communities transmitted from the State of Indiana to petitioner at a point near said City of Paris, and thence transmitted by petitioner to the aforesaid cities and communities by means of petitioner's said interconnecting gas transmission mains; that the natural gas so obtained by petitioner and furnished by it to said cities and communities is now supplied to petitioner only from day to day under arrangements terminable at any time; that petitioner's said transmission mains are, and for several years will be, adequate respectively for the transmission from Mattoon of all the natural gas requirements of Charleston and Paris and communities to the east, and the transmission from Mattoon of all the natural gas requirements of Effingham and communities to the south, but that the transmission main extending from Mattoon to Charleston and Paris is not adequate for the transmission from Paris of the natural gas requirements of Charleston, Mattoon and Effingham and said communities; that the transmission from Paris to Charleston, Mattoon and Effingham and intermediate communities of the natural gas

requirements of said three last named cities and said communities would necessitate the installation by petitioner of additional transmission facilities between Paris and Mattoon which would require a large capital expenditure on the part of petitioner; that such additional capital expenditure, together with additional operating costs by way of depreciation, maintenance, taxes, etc., as will necessarily be in- [fol. 24-4] cident to such additional transmission facilities, and the resulting additional burden upon the public served by petitioner in said cities and communities, will be wholly eliminated by the procurement by petitioner, at or near the City of Mattoon, of all petitioner's gas requirements for the above named cities and intermediate communities.

That the Illinois Natural Gas Company is a corporation organized and existing under and by virtue of the laws of the State of Illinois, furnishing and offering to furnish to Illinois natural gas distributing public utilities at wholesale, delivered at suitable points at or near the mains of said distributing utilities, the natural gas required by such distributing public utilities for distribution by them in their public utility natural gas operations; that petitioner has requested the Illinois Natural Gas Company to furnish it, delivered at or near the City of Mattoon, under said Illinois Natural Gas Company's regularly filed rates and subject to its approved rules, regulations and conditions of service, petitioner's natural gas requirements for the four aforesaid cities and their intermediate communities; and that the Illinois Natural Gas Company has advised petitioner of its willingness to install the necessary equipment and to furnish petitioner with all of its aforesaid natural gas requirements at the City of Mattoon on the terms aforesaid, if the same can be legally accomplished.

That petitioner has requested the Illinois Natural Gas Company to itself make application, or to join with peti- [fol. 24-5] tioner in making application, for an order of Commission authorizing the furnishing by it of petitioner's aforesaid requirements on said terms, but that said Illinois Natural Gas Company refused, or to date has taken no steps, to do so; that petitioner is advised that it will be necessary for the Illinois Natural Gas Company, in order to furnish the aforesaid service, to construct and put in operation a main leading from a point on petitioner's system at Mattoon to the supply of the Illinois Natural Gas Company some eighteen miles northwardly from said city; that petitioner's

need for a supply of natural gas at the City of Mattoon adequate to its uses is urgent and should be met prior to the winter season of this and the coming year; that petitioner's aforesaid requirements are permanent and will increase from year to year; that said requirements fully justify petitioner's request to Illinois Natural Gas Company for said service; that petitioner is willing to abide by all lawful rules, regulations, terms and conditions in respect to the furnishing of said service and is financially well able to pay for said service; that the rendition of the said service by Illinois Natural Gas Company to petitioner will be of benefit to the public and is reasonably necessary to the convenience thereof; and that, as petitioner is informed and believes, no good or lawful reason exists for any delay on the part of the Illinois Natural Gas Company in preparing for and rendering said service.

Petitioner therefore asks that the Illinois Natural Gas Company be made a party to this proceeding, and prays [fol. 24-6] that the Commission by appropriate order direct the Illinois Natural Gas Company to furnish to petitioner, not later than such reasonable date as shall be fixed by the Commission, a supply of natural gas delivered at or near the City of Mattoon, Illinois, adequate to petitioner's natural gas public utility needs in the aforesaid cities and communities, and that said Illinois Natural Gas Company be authorized and directed to do all things necessary to the carrying out of such direction.

Verification of foregoing application by E. F. Kelly, Vice-President of Central Illinois Public Service Company.

Application set for hearing June 6, 1939, and parties advised by letter.

Answer to Application before Commission

Answer filed by Respondent on June 2, 1939, abstracted as follows:

I. That Respondent is a wholly owned subsidiary of Panhandle Eastern Pipe Line Company, a Delaware corporation, hereinafter referred to as "Eastern"; that Eastern owns a natural gas transmission system which extends from the Amarillo gas field in the Panhandle area of the State of Texas and from the Hugoton gas field in Southwestern Kansas and Oklahoma through the States of Oklahoma, Kansas, Missouri and Illinois to a point near Dana, Indiana,

adjacent to the Illinois-Indiana state line; that Eastern produces and purchases natural gas at said source of supply, transports the same through its main transmission line, [fol. 24-7] and, in some instances, through lateral or branch lines extending therefrom to the various points of delivery where said natural gas is delivered to its various customers. That near, Dana, Indiana, Eastern's main transmission line connects with the natural gas transmission line of Michigan Gas Transmission Corporation, which line extends from said point near, Dana, Indiana, to a point near Detroit, Michigan.

II. Respondent owns and operates various lateral or branch pipe lines extending from the transmission facilities of Eastern to the points where deliveries of gas are made by Respondent to its various customers in the State of Illinois; that under a written contract between Respondent and Eastern, dated June 30, 1938, Respondent purchases all natural gas required by it for delivery to its customers in the State of Illinois and deliveries from Eastern to Respondent are made at the several points of connection between Respondent's lateral or branch lines and the transmission facilities of Eastern.

III. Respondent further represents that prior to connecting its lateral lines with the facilities of any of its customers, Eastern had knowledge of its proposed delivery and sale, the date upon which service would be required, the estimated daily demand of the customer involved, and of the various circumstances with respect to the peak demands of such customer. That Eastern in packing its transmission line from day to day with natural gas from said sources of [fol. 24-8] supply, estimates the quantities of natural gas which will be required by all of its customers, including Respondent, in the various states in which it sells natural gas and thus continuously transports sufficient gas to satisfy the requirements of all of its customers; that the quantities of natural gas necessary to satisfy Respondent's requirements are transported continuously by Eastern from said sources of supply to the various points of delivery where it is delivered to Respondent, and such deliveries are made without reduction in pressure, and Respondent, without breaking the continuity of transportation, carries said gas continuously through its lateral lines with only such reduction

in pressure as is calculated to effectuate the most economical transportation to its customers; that from day to day the requirements of all of Respondent's customers are estimated in advance to enable Eastern to deliver to Respondent the necessary quantities of natural gas from day to day to fulfill the requirements of said customers of Respondent; that in this manner natural gas which is contracted for by Respondent before the gas leaves the ground at the sources of supply of Eastern is appropriated, in a practical sense, to Respondent's various customers and is carried continuously and at high pressures through the facilities of Eastern and Respondent to its various destinations without unnecessary treatment, without break in transportation thereof, and without storage, intermediate or otherwise.

IV. That the manner of effecting delivery to Respondent's customers in the State of Illinois, as above described, [fol. 24-9] is the daily, normal, contemplated and followed course thereof, and that all natural gas it delivers to its customers from the time it leaves the ground at the sources of supply until delivered into the facilities of its customers is in the course of transportation in interstate commerce; that despite this fact the Congress of the United States, prior to the spring of 1938, had not exercised the power, vested in it by Article I, Section 8, Clause 3 of the Constitution of the United States, to regulate the interstate transportation of natural gas, and, therefore, Respondent and its predecessor, Panhandle Illinois Pipe Line Company, have, in the past willingly submitted to the jurisdiction of the Commission with respect to the transportation, delivery and sale of natural gas in the State of Illinois.

V. That in the spring of 1938 the Congress of the United States enacted the "Natural Gas Act" into law and the same became effective on June 21, 1938; that under the provisions of said Act, the Federal Power Commission is given broad powers of regulation over the transportation and sale for resale of natural gas in interstate commerce; that since said Act became effective Respondent has been ordered by the Federal Power Commission to file all of its contracts, rate schedules, and rules and regulations with said Commission, with which order Respondent has complied, and has been advised by the Federal Power Commission that it is a natural gas company within the meaning of said Act.

[fol. 24-10] That Section 7, subparagraph (c) of said Natural Gas Act, provides, in part, as follows:

"No natural gas company shall undertake the construction or extension of any facilities for the transportation of natural gas to a market in which natural gas is already being served by another natural gas company, or acquire or operate any such facilities or extensions thereof, or engage in transportation by means of any new or additional facilities or sell natural gas in any such market unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity require or will require such new construction or operation of any such facilities or extensions thereof. * * *"

VI. Respondent states on information and belief that the natural gas requirements of the cities and communities referred to in the application of Petitioner are now, and have for several years, been obtained from Universal Gas Company at a point near the Illinois-Indiana state line where the facilities of Petitioner connect with the facilities of said Universal Gas Company; and that for Respondent to construct a pipe line to the facilities of Petitioner and sell natural gas to it and thus enter and serve a territory now being served by another natural gas company and engage in transportation by means of new and additional facilities without complying with Section 7, subparagraph (c) of said "Natural Gas Act," would be a direct violation of said Act and unlawful and would subject Respondent to severe penalties provided for therein.

[fol. 24-11] VII. That since the Congress of the United States has exercised its right to regulate the transportation and sale of natural gas in interstate commerce and has delegated extensive regulatory powers to the Federal Power Commission, the jurisdiction of said Federal Power Commission over the Respondent with respect to all matters involved in Petitioner's application is exclusive, and that this Commission is without jurisdiction over Respondent with respect to such matters and is without power or authority to regulate the transportation, delivery, and sale of natural gas by Respondent.

That it has informed Petitioner that, subject to the approval of Respondent's Board of Directors, it is willing to

construct the necessary pipe line to connect with Petitioner's pipe line and distribution system at Mattoon, Illinois and to furnish natural gas to Petitioner for all of its natural gas requirements for resale in Mattoon, Charleston, Effingham, and other communities, (except the City of Paris) connected to its existing pipe line and distribution systems in said cities if the same can be accomplished legally, such sale and delivery to be made at Respondent's regular filed rates and subject to its filed rules, regulations and conditions of service and to continue for a period of not less than ten years; that such construction and service cannot be accomplished legally without Respondent first procuring a certificate of convenience and necessity therefor from the Federal Power Commission.

[fol. 24-12] Respondent prays that Commission dismiss Petitioner's application for lack of jurisdiction over Respondent and the subject matter of this proceeding or, in the alternative that Commission enter an order denying Petitioner's application for the same reasons.

Verification by G. J. Neuner, Vice President of Illinois Natural Gas Company.

Recital as to Hearing Before Commission

Case called on June 6, 1939, and heard by Chief Examiner Farrell, and continued to June 21, 1939, at Springfield for further hearing. The evidence reported at the hearing on June 6, 1939, is here abstracted, together with that given at the continued hearing on June 21, 1939.

Statement of Evidence Before Commission

A. D. Stevens, Springfield, Illinois, entered his appearance for the Petitioner. G. W. Clark, 101 West 11th Street, Kansas City, Missouri, entered his appearance for the Respondent.

Statement of Mr. Clark for Respondent

Mr. Clark stated that, under the Natural Gas Act passed by the Congress of the United States in the Spring of 1938, the Federal Power Commission has jurisdiction of the Respondent Company as completely as has been exercised theretofore by the Illinois Commission, and such situation puts the Respondent Company in the position of trying to

serve two masters. He further stated that, as an example, in this particular case, if the Illinois Commission should order the Respondent to serve the City of Mattoon and the other cities, it would have to build a line approximately eighteen miles in length, which it believes would be a direct [fol. 24-13] violation of the Natural Gas Act unless a Certificate of Convenience and Necessity was first procured from the Federal Power Commission.

Mr. Clark pointed out that for several years the Panhandle Illinois Pipe Line Company operated in Illinois as the predecessor to the Illinois Natural Gas Company, the Respondent herein, and that the basic and essential facts as to both companies are the same with respect to whether or not they were and are engaged in interstate commerce. The Respondent Company now feels that it is in a very precarious position, being subject to two Commissions claiming the same jurisdiction and therefore it must now raise the question.

STIPULATION RE ANSWER OF RESPONDENT

The parties thereupon stipulated that all matters alleged in the foregoing Answer of Respondent, filed June 2, 1939, would be testified to by Mr. Neuner, and that said Answer might go into the record as the testimony of Mr. Neuner, subject to objections as to materiality and pertinency and conclusions of law.

Answer of Respondent, filed June 2, 1939, read into the record.

TESTIMONY OF G. J. NEUNER

Mr. G. J. NEUNER, called as a witness on behalf of the Respondent, testified as follows:

I am Vice President in charge of operations of the Panhandle Eastern Pipe Line Company and the Illinois Natural Gas Company, and have been, for approximately four years, Vice President of the Panhandle Company, and have been an officer of Respondent since July, 1938.

[fol. 24-14] The Panhandle Eastern Pipe Line Company is organized under the laws of the State of Delaware and has its principal business office in Kansas City, Missouri.

Respondent is organized under the laws of the State of Illinois and has its principal business office in Kansas City, Missouri.

The Panhandle Company owns and operates gas leases in Texas, Oklahoma and Kansas and drills wells and produces gas in those areas, as well as purchases natural gas from other producers in those areas. It owns and operates the natural gas transmission line commencing at a point in Moore County, Texas, extending northward through the Panhandle of Texas and the Panhandle of Oklahoma into the State of Kansas at a point near Liberal, Kansas. At that point the Texas line joins two other main gathering lines from points in the Hugoton field in Southwestern Kansas, the three gathering lines converging at a point near Liberal.

From that point the main transmission line of Panhandle Eastern Pipe Line Company extends in an easterly direction through the State of Kansas, crossing the Missouri-Kansas State line about thirty-five miles south of Kansas City, enters the State of Missouri, crosses the State of Missouri and enters the State of Illinois at a point near Louisiana, Missouri. At that point the main line extends across the State of Illinois to a point in the State of Indiana near Dana, Indiana. This main transmission line of the Pan- [fol. 24-15] handle Eastern Pipe Line Company is used in the transportation and delivery of natural gas along this route, and to a connecting pipe line near Dana, Indiana.

The Illinois Natural Gas Company is a natural gas transmission pipe line company operating in the State of Illinois. Its property consists of lateral lines which connect with the transmission facilities of the Panhandle Eastern Pipe Line Company in Illinois, from whom it purchases its requirements of natural gas for resale in that State. The Respondent owns a number of lateral lines, all of which, with the exception of one, connect with the main transmission line of the Panhandle Eastern Pipe Line Company at points within the State of Illinois. The exception to which I referred is the lateral line which it owns and operates and uses to serve gas at the City gate of Quincy, Illinois. That lateral line connects with a lateral line owned by the Panhandle Eastern Pipe Line Company at a point on the east bank of the Mississippi river some distance below Quincy. This lateral line to which the Quincy lateral connects takes off from the main line of the Panhandle Eastern Pipe Line

Company in the State of Missouri at a point south of Hannibal.

When I refer to Kansas City, I mean either Kansas City, Missouri, or Kansas City, Kansas, as it is about the same distance from both cities.

Panhandle Eastern Pipe Line Company makes sales for deliveries of gas to other distributing utilities along the route of its pipe line company at town borders, deliveries [fol. 24-16] being made through measuring stations owned by the company. In addition to sales to distributing utilities, engaged in the business of distributing natural gas at retail to the public, Panhandle Eastern Pipe Line Company also sells at point of connection with Illinois Natural Gas Company lateral lines with its main line, such amounts of natural gas as Illinois Natural Gas Company requires for resale to distributing utilities in the State of Illinois. It also sells gas to other pipe line companies where deliveries are made at our measuring station near Dana, Indiana. At that point it also delivers substantially large quantities of natural gas to a corporation known as the Michigan Gas Transmission Corporation, which acts as gathering agent for Panhandle Eastern Pipe Line Company, and transmits or transports gas to the City of Detroit, Michigan. It also sells gas to a corporation known as the Kentucky Natural Gas Company operating in the States of Indiana and Kentucky. This delivery is also effected at the Dana measuring station in Indiana.

Dana is a few miles east of the Illinois-Indiana state line, but the measuring station is located on a plot of ground in Indiana immediately adjacent to the state line. To be specific, the facilities of the Panhandle Eastern Pipe Line Company owned and operated by it extend perhaps one hundred and fifty or one hundred and seventy-five feet into the State of Indiana, at which point this measuring station is located.

[fol. 24-17] In addition to the above mentioned deliveries, Panhandle Eastern Pipe Line Company sells gas to a number of large industrial customers in the State of Missouri.

Illinois Natural Gas Company's business consists generally of the purchase of natural gas at the point where its lateral lines connect with the Panhandle Eastern Pipe Line Company, and the transportation and delivery of such gas through these lateral lines to gas distributing utilities in the State of Illinois. These deliveries are generally and

usually made through town border measuring stations at or near the city limits of the cities where the distributing plants are located.

In addition to making deliveries to distributing utilities, I believe Respondent serves either four or five industrial customers directly, these customers being located at points along its lateral lines south of the City of Quincy, Illinois.

The Panhandle Eastern Pipe Line Company is not engaged in the direct distribution of gas to the public at any place.

In all cases sales by the Panhandle Eastern Pipe Line Company are made under contracts executed either in Kansas City or New York before any deliveries of gas are made.

Commencing in the field where the gas is produced, the pressure of the main gathering lines, of course, is ordinarily at pressure. That pressure drops before it reaches the [fol. 24-18] first compressing station. As I recall, the suction pressure at Liberal Station is somewhere around 225 pounds. The discharge pressure at Liberal Station is around 450 pounds. Without describing the suction and discharge pressure at each of the ten or eleven compressing stations, generally speaking, the pressure in the main line varies from a discharge pressure at the compressor station of about 450 pounds to a suction pressure at the next station of around 225 to 250 pounds.

I could not state what the mean pressure is. There is a natural pressure drop due to friction, the taking of gas out and other reasons.

Asst. Comr. Farrell: Is the purpose of this testimony to show that this is a high pressure line?

Mr. Clark: To show not only that it is a high pressure line, but to show that it is not a distributing line or a low pressure line which is regulated to serve various customers on their demand and to serve gas available for use and utilization at that pressure.

Deliveries by Panhandle Eastern to Respondent are made at main line pressure with the exception that the deliveries into the Quincy lateral are not necessarily made at main line pressure because delivery is through a lateral owned by the Panhandle Eastern Pipe Line Company.

Respondent, after receiving the gas at main line pressure, reduces the pressure in its lateral lines in order to effect

[fol. 24-19] the most economical transportation of that gas to the customer served from that lateral.

Neither the Illinois Natural Gas Company nor the Panhandle Eastern Pipe Line Company owns or operates any holders or other equipment for the storage of gas, where gas may be obtained readily by anyone seeking gas in a condition ready for utilization.

Respondent's Exhibit No. 1, which was a conforming copy of a gas contract between Panhandle Eastern Pipe Line Company and Illinois Natural Gas Company, dated as of June 30, 1938, was admitted into the record.

Said Contract was approved by the Illinois Commerce Commission by order entered on June 15, 1938 in the proceeding involving a partial liquidation of the Panhandle Illinois Pipe Line Company (No. 26563).

Respondent's Exhibit No. 2 is a map showing the main transmission system of the Panhandle Eastern Pipe Line Company and the Illinois Natural Gas Company, including the various lateral lines connecting thereto. The Transmission system and lateral lines of Panhandle Eastern Pipe Line Company are shown by black lines. The pipe line system of Respondent is shown by red lines. The Green line connecting from Panhandle Eastern Pipe Line Company main line near the Illinois-Indiana State line and extending generally in a northeastern direction to Detroit is the connecting line owned by the Michigan Gas Transmis-[fol. 24-20] sion Corporation, which is I understand, a wholly owned subsidiary of the Columbia Gas and Electric Corporation. Exhibit No. 2 received in evidence.

Before connection is actually made to the facilities of each customer of the Panhandle Eastern Pipe Line Company, it had knowledge of the approximate date of first delivery, the demands of the customer and pertinent data with respect to its peak load demands. This was necessary because the Panhandle Eastern Pipe Line Company had to provide for enough gas in the field and to make arrangements to connect enough openflow to provide the quantity of gas required at the market to serve the customer.

The Panhandle Eastern Pipe Line Company had knowledge as to the demands, the peak load requirements and date of first delivery for Respondent's customers before those customers were actually served by Respondent.

The source of supply of gas is in Texas, Southwestern Kansas and Oklahoma.

In packing the line, the pressure dispatcher estimates in advance each day the requirements of all of the customers of the Panhandle Eastern Pipe Line Company and Respondent and packs the estimated requirements of the customers. From day to day the customers of these companies receive gas without any break in transmission from the source of supply to the point of connection between the facilities of the Panhandle Eastern and its customer and also to the [fol. 24-21] point of connection between Respondent's facilities and Respondent's customers' facilities.

There is a reduction in pressure as the gas enters the lateral line. I testified previously that that reduction is in such amount as to effect the most economical transportation of the gas through the lateral line to the customer. The pressure in the lateral line varies with the length of the line, the size of the line and the market requirements of the customers served from the lateral line. But in no case is the pressure reduced to a point where the gas is usable without further reduction of pressure by the ordinary retail consumer. In every instance the distributing utility cuts the pressure further after delivery is made into its plant. I am not in a position to answer the Examiner's question as to what the pressure is reduced to in these laterals in Illinois, for the pressure itself varies with the different sizes and lengths of lateral. Ordinarily I would say the pressures are cut to something in excess of 125 pounds. This is a general statement. I suppose on the Peoria lateral line it would be a great deal higher. On the lateral lines where it is a short distance from the main line to point of ultimate delivery, the pressure might be somewhat less than 125 pounds.

I will say there is a continuous movement of the gas from the field to the point of delivery to the customer. To the best of my knowledge, no deliveries are made but what before the gas is actually utilized, the customer or dis- [fol. 24-22] tributing company, as the case may be, effects a further reduction in the pressure.

The procedure in packing the lines for the customers of the Panhandle Eastern Pipe Line Company and the Respondent is briefly this. We have in our general office at Kansas City a man who is charged with the duty and responsibility of dispatching pressure through our line. This employee estimates from day to day, from weather reports

and various reports we have and from estimates we have from the various customers connected to our system, just how much gas will be required to serve those customers from day to day.

After our pressure dispatcher has from the various sources of information that I have mentioned, estimated the amount of gas which the customers of the Panhandle Eastern Pipe Line Company and the Respondent may require from day to day, he issues his order to the men in the field to turn a sufficient amount of gas from the wells into the line from day to day to meet the requirements of all of these customers. This is the daily, normal course of operation.

If additional supply of gas is needed, a man locally located in the field is sent out to open up wells, which might take an hour or a few hours depending upon the distance. In case of emergency, he would turn on the nearest well.

The Panhandle Eastern Pipe Line main was tested within the last year and we feel it has a safe working pressure of [fol. 24-23] a maximum of around 500 pounds. At our booster stations, with our present equipment we have raised the pressure to something in excess of 470 pounds in a few cases.

On Respondent's Exhibit No. 2, the lateral lines leading off of the Panhandle Eastern Pipe Line Company's main transmission lines in the State of Missouri, which appear to be very similar to those leading off of its line in Illinois, are owned by the Panhandle Eastern. The operations of the Panhandle Eastern in delivering gas through its main line and to its customers at the end of the branch lines in Missouri and the reduction of pressure is no different from the operation and reduction of pressure of deliveries in Illinois.

The lateral line from the Panhandle Eastern main line west of the Mississippi river, extending northward to Hannibal and across the river toward Quincy is owned by the Panhandle Eastern to a point on the east bank of the river, at which point it connects with a lateral line owned by the Illinois Natural Gas Company, which extends from that point of connection to the town border measuring station south of the city limits of Quincy.

The pressure at which the gas comes to the Illinois Natural Gas Company at a point near Quincy from the Panhandle Eastern is the same pressure at which the Illinois

Natural Gas Company carries it through their own main until delivered to Petitioner.

If a customer in any particular case at the end of a lateral line was the only customer on the entire system, [fol. 24-24] there would probably be no necessity for reducing the pressure after it left the main transmission line of the Panhandle Eastern, because the main line would not carry any more pressure than necessary to supply that particular customer. The high pressure carried on the main line,—being higher than in any particular lateral line,—is because there is more gas going to other customers of the Illinois Natural Gas Company or of the Panhandle Eastern. If, for example, the Peoria lateral were the end of the system, there would be no reason for carrying any higher pressure in the main line at the point where the Peoria lateral connects to the main line than is necessary to supply the customers receiving service from the Peoria line. But we carry higher pressure in the main line at the Peoria lateral because further east there are other customers in addition to those on the Peoria lateral depending on gas supplies.

Upon stipulation Mr. Neuner read into the record that portion of Section 7, Paragraph (c) of the Natural Gas Act that is copied in the Response of Respondent.

Respondent's Exhibit No. 3, being Federal Power Commission Order No. 53, dated July 5, 1938, received by the Panhandle Eastern Pipe Line Company, was admitted into the record.

Respondent has complied with said order and filed its rate schedules, rules and regulations and all other matters contained therein with the Federal Power Commission. [fol. 24-25] (Objection by Mr. Stevens as to materiality. Asst. Com. Farrell, "It may stand.")

Respondent's Exhibit No. 4 is a photostatic copy of a letter addressed to the Illinois Natural Gas Company from the Secretary of the Federal Power Commission, dated April 18, 1939. In substance it states that the Federal Power Commission holds that the Respondent is a natural gas company within the meaning of the Natural Gas Act and is required to comply with the provisions of the Act, including the filing of rate schedules.

End of examination of Mr. Neuner.

Petitioner's Exhibit A, being copy of order issued by Illinois Commerce Commission in Docket No. 21882, in which

Commission refused to approve contract entered into by the petitioning company and Universal Gas Company, and ordered Petitioner to take steps to procure a source of supply of gas, was admitted. Petitioner's Exhibit B, being copy of order of Commission in Docket No. 26563, dated June 15, 1938, wherein Panhandle Illinois Pipe Line Company, predecessor company of Respondent, sought the approval of contract and transfer of stock to the Panhandle Eastern Pipe Line Company, with exhibits attached, was admitted into the record. (Objection by Mr. Clark to relevancy of both exhibits overruled.)

TESTIMONY OF E. F. KELLY

MR. E. F. KELLY, called as a witness on behalf of the Petitioner, testified as follows upon examination by Mr. Stevens:

I am, and have been since January, 1932, Vice President [fol. 24-26] of the Central Illinois Public Service Company. Before 1932 I was connected with the company as assistant to the Vice President and prior thereto as Division Manager of Division M, with headquarters at Mattoon. I had full charge of the operations in Division M which embraced all the territory here in question and the various cities and towns involved in this proceedings. I have been with the company since 1919. My experience with the company has had to do with the operation of gas utilities.

The Petitioner is an Illinois corporation and in its gas operations is a public utility subject to the jurisdiction of the Commission. In my opinion the Respondent is also subject to the jurisdiction of the Commission.

The Petitioner has operated gas utilities in the cities of Mattoon, Charleston and Paris since it was organized about twenty-six years ago, and in Effingham since about 1930. These cities and smaller intermediate communities are classed by us as the Mattoon Group and is independent, insofar as gas connections are concerned, with any other group operated by the company. The population of the various cities and communities concerned, taken from the 1930 census: Charleston, 8012. Paris, 8781. Kansas, 900. Ashmore, 431. Mattoon, 14,631. Neoga, 995. Effingham, 4,978. Sigel, 259. Total, 38,987. Charleston is east of

Mattoon; Paris is east of Charleston. Mattoon is about twelve miles from Charleston; and about forty miles from Paris. Paris is approximately on a direct east line from [fol. 24-27] Mattoon. Effingham is south and a little west about 26½ miles from Mattoon. Kansas and Ashmore are east of Charleston and are intermediate to Mattoon and Paris. Neoga and Sigel are intermediate between Mattoon and Effingham.

The gas sales at Paris for 1938 totaled 30,112,500 cubic feet. Charleston, 29,648,100 cubic feet. Kansas, 1,058,800 cubic feet. Ashmore 135,900 cubic feet. Mattoon, 78,856,600 cubic feet. Neoga 924,900 cubic feet. Effingham, 16,967,900 cubic feet. Sigel, 252,700 cubic feet. A total of 157,958,400 cubic feet, for the calendar year 1938. This was natural gas provided from the Universal Gas Company with a 950 b.t.u. content.

As of December 31, 1938, we had at Paris, 1,210 customers. At Charleston, 1,040 customers. At Kansas 52 customers. At Ashmore 12 customers. At Mattoon, 2,330 customers. At Neoga 49 customers. Effingham 529 customers. Sigel, 11 customers. A total of 5,233 customers as of that date. The volume of gas required for these customers is increasing. We began to serve natural gas in 1932. There has been about a 100% increase in amount used since 1934. Recently we have made no particular attempt to increase the growth of our business. House heating by gas in our towns is increasing rapidly but we haven't pushed sales in this group of towns because the main between Charleston and Paris is overloaded during winter when house heating load would be on and we did not wish to render any more house heating load with the facilities we now have.

[fol. 24-28] The mains connecting these towns are all four inch mains, being about forty miles long from Paris to Mattoon and about 26½ miles long from Mattoon to Effingham. The Mattoon-Charleston main was installed originally about twelve years ago, the one from Charleston to Paris eleven years ago, and the one from Mattoon to Effingham nine years ago.

The Charleston-Paris main is a continuation of the Mattoon-Charleston main, and they are all four inches.

At the time these mains were installed we were furnishing artificial gas, the plant being located in each town where we were serving gas—Mattoon, Charleston and Paris. Sub-

sequently, in order to make all of the gas for Charleston and Mattoon at Mattoon, we extended a gas main connecting these two towns. The same reason motivated the extension of the main to Paris. In this manner we were able to get the advantage of centralized manufacture and its resulting economies. The exact distance of these extensions is 40.24 miles.

In November, 1929, we started purchasing gas from the Indiana Consumers Gas & By-products Company who had a coke oven plant at Terre Haute and the gas was afterwards, until natural gas was furnished, supplied from that plant. That gas was brought through a six-inch main extending from Terre Haute into Paris, which was owned from Terre Haute to the Indiana state line by the Indiana Company and from the state line to Paris by our Company. [fol. 24-29] The Indiana Gas & By-products Company was later taken over by the Universal Gas Company, the change of name being made in September, 1935.

We continued using the artificial gas from the coke oven of the Indiana Company at Terre Haute until August 1932 when we began getting natural gas through the Indiana Consumers Gas & By-products Company whom, we were informed, purchased it from the Kentucky Natural Gas Company. The Indiana Consumers was the same as the Indiana Gas & By-Products Company.

The arrangement under which we started to obtain natural gas was in the form of a contract and was made subject to the approval of the Illinois Commerce Commission, which Commission subsequently disapproved the contract.

We started supplying service to Effingham in 1930 with the coke oven gas from Terre Haute.

The furnishing of natural gas to the cities in this territory has resulted in an increase over the expected amount that would have been furnished if we had continued to use artificial gas, house heating being largely responsible.

The largest output, or the maximum demand, west of Paris that we have had during a single day totaled 1,356,000 cubic feet. The four inch main between Mattoon and Paris was designed to supply the gas out of the Mattoon plant and was intended to carry not over 100 pounds pressure. It was laid in 1927, and at that time, so far as I know, there [fol. 24-30] was no pressure above 100 pounds around Illinois, that then being an unusual pressure. When you get over 150 pounds in that main it might cause trouble, but

for a day or two during the peak period we were compelled to carry more than 200 pounds as a matter of emergency. As to everyday reliance on that main, the maximum pressure should not be over 200 pounds at any time, and for day in and day out operation, not over 150 pounds. At that pressure, this main would not be able to satisfy the present heating requirements of Charleston, Mattoon and Effingham. This capacity has been very much extended and for that reason we stopped attempting to get any more business in February, 1936. Our load was not as great then, except for the emergency during the low temperature period, as it is now.

During the emergency period we carried the gas at over 200 pounds pressure. The pressure at Mattoon dropped slightly below 50 pounds which is a minimum for good operation. At 50 pounds pressure, we cannot satisfactorily get gas into Effingham under present conditions. Considering our peak load during the emergency period, I do not think an additional load could be carried in our mains on the Mattoon, Charleston and Effingham line.

If we had an adequate supply of natural gas at Mattoon, we would make an effort, such as we have made in other localities, to secure additional house heating and industrial customers. Assuming such adequate supply, in my judg-
[fol. 24-31] ment, there could be an increase of at least 20% to 25% for industrial and house heating customers. This statement is based upon our operation of other gas utilities in Central Illinois.

We do not think there is anything we can do in the way of putting in boosters which would increase the pressure and flow of gas. We have a plant at Mattoon that could be operated to supply artificial gas in the event anything should happen to the main between Charleston and Paris and Paris and Mattoon, but it would be unsatisfactory. This plant could be operated but has not been for three years as we could not make as much as 950 Btu there.

We have two holders at Mattoon, one of 500,000 cubic feet and the other of 200,000.

To build an additional four inch main from Paris to Mattoon would cost about $260,000.00. If we continue to get gas from the Paris source, there would be some maintenance and depreciation charges and other operating expenses in addition to the capital expenditures already made. We have no contract for the delivery of natural gas from

the Indiana source, but operate on a month to month basis. This is being done without any permission from the Illinois Commerce Commission or other regulatory body. We receive our supply of natural gas from day to day under an arrangement which can be terminated at any time.

The Illinois Natural Gas Company, as well as its predecessor in ownership of the lateral lines, the Panhandle [fol. 24-32] Illinois Pipe Line Company, has its public utility rates on file with the Illinois Commerce Commission under which it furnishes natural gas to other public utility distributing gas companies in Illinois.

The nearest practical point of connection on the line of the Panhandle Eastern Pipe Line Company is near Tuscola, about twenty miles north of Mattoon. Mattoon is practically the center of our gas load for that group. If we got all of our requirements at Mattoon from the Illinois Natural Gas Company, I believe the volume of business would be such as to make it profitable to the Illinois Natural Gas Company. That Company is at present serving us at other localities at a greater capital expense than would be necessary from Mattoon for a much less volume of business. In those other instances, either the Illinois Natural Gas Company, or its predecessor, built the line from the Panhandle Eastern to our distribution system at their own expense, and furnished and have continued to furnish gas at the rates on file with the Illinois Commerce Commission. This is true of four different points in the state—Canton, Hoopeston, Quincy and Taylorville.

Shortly after the order of the Commission, dated June 18, 1936 (Petitioner's Exhibit A) was issued, we caused to be brought a proceeding before the Commission with a view to requiring the Panhandle Illinois Pipe Line Company to furnish us service at Mattoon. This case was not concluded because during its progress a suit was brought by the Uni- [fol. 24-33] versal Gas Company of Indiana, the predecessor in ownership and operation of the Indiana Consumers Company, in the Federal Court for this district, to enjoin us from ceasing to receive gas from it and enjoining also the Panhandle Illinois Company from furnishing us with gas. The proceeding before the Commission was held up awaiting the outcome of this suit as to whether we had to receive gas under that contract regardless of the order of the Commission. The suit in the Federal Court finally terminated in a judgment holding that the contract was not binding.

An appeal was taken by the Universal Gas Company to the Circuit Court of Appeals and on February 3, 1939 an opinion was handed down affirming the lower court and annulling the contract. The petition for rehearing was denied on March 27, 1939. We then waited to ascertain whether a petition for certiorari would be filed to the United States Supreme Court, and while the time for filing has not yet expired, we have received fairly definite assurance that it will not be filed. This is our sole reason for not pressing our former case and not applying earlier for service from the Illinois Natural Gas Company. We have dismissed the other application before the Commission.

We took up with Mr. Neuner, as a representative of the Illinois Natural Gas Company, at a meeting in Chicago within the past two months the matter of securing service from the Company. Mr. Neuner did not object to the furnishing of gas for this group and delivering it at Mattoon [fol. 24-34] if it could be done legally, but he took the position that the application therefore should be made to the Federal Power Commission, because we were receiving gas from across the state line. We proposed to enter into an agreement subject to the approval of the various bodies that might have jurisdiction. Mr. Neuner said he would consider it and let us know. About ten days later at a meeting in Springfield we proposed to Mr. Neuner that we agree on a contract and that it first be presented to the Illinois Commerce Commission for their approval, with the right in the Illinois Natural Gas Company to present it to any other body it thought might have jurisdiction. This proposal was rejected.

It was then suggested by us that a contract be drawn without signatures and presented by the two companies to the Illinois Commerce Commission for its approval, with a prayer for authority to execute it and carry it out, containing, however, the same information that it would be subject to the approval of any governmental body having jurisdiction in the premises. This suggestion was met with refusal and a request to consider it further.

Petitioner's Exhibit C, received in evidence, is a copy of a letter, dated May 4, 1939, addressed to the Central Illinois Public Service Company, to my attention, signed by the Illinois Natural Gas Company, Mr. G. J. Neuner, Vice-President.

Petitioner's Exhibit D, received in evidence, is a copy of a letter, dated May 8, 1939, addressed to the Illinois [fol. 24-35] Natural Gas Company, attention Mr. G. J. Neuner, Vice-President, signed by me as Vice-President of the Central Illinois Public Service Company, in response to Exhibit C.

Petitioner's Exhibit E, received in evidence, is a copy of a letter, dated May 11, 1939, to the Central Illinois Public Service Company, to my attention, from G. J. Neuner, Vice-President of Illinois Natural Gas Company, in answer to Exhibit D.

During these negotiations with Mr. Neuner, we at all times offered to comply with all the requests made by the Illinois Natural Gas Company as to volume, term and other matters, and there was no difference between us and the Company as to such.

In the event we are able to obtain the supply of natural gas at Mattoon, for which we apply in this proceeding, we would then be in a position to increase our gas load in this group. The four-inch main would be adequate to serve Charleston and Paris for many years to come, but, assuming that all our gas came through Paris, it would not be adequate for the larger load at Charleston, Mattoon and Effingham and is not adequate today. It would require the expenditure hereinbefore mentioned and the additional maintenance and depreciation charges and other operating expenses for its upkeep, which would be a burden on our customers in those communities. This burden would be eliminated if we could secure our supply of gas in the City of Mattoon. The question is, then, largely one of the welfare [fol. 24-36] of the consumers in those communities.

Based on strict law, it would be immaterial to us, with an adequate rate covering our capital expenditures and operating expenses, whether we built the additional main continuing from Paris or went to Mattoon, because the burden would fall on the customer. All the hazards of this line, since it is adequate from Mattoon to Paris, would be removed through this connection for at least ten years.

In our conversation with Mr. Neuner, it was stated that the arrangements under which the Illinois Natural Gas Company would furnish the gas at Mattoon, aside from any question of jurisdiction, would be the same as it is under which they now furnish us gas at four other points, with

the exception they were in a position to supply the money to build the line to Mattoon, whereas in other instances the money was procured by a loan from us and then repaid. The exact terms and conditions are contained in Exhibit C.

The Gas company and its predecessor have always been willing to serve us in accordance with its policy and general arrangements. This company serves a number of other distributing companies in Illinois, it being their business to furnish gas to any such company for which they have the capacity.

I have ascertained just recently from our own engineers at what approximate pressure the Illinois Natural Gas Com- [fol. 24-37] pany carries the gas in its mains and where the increase or decrease in pressure takes place.

The first of our towns which the Illinois Natural Gas Company serves, outside of Canton, is the Taylorville lateral. The reducing apparatus for reducing the pressure of the gas carried by the Panhandle Eastern Pipe Line Company and received by the Natural Gas Company is immediately adjacent to the main of the Panhandle Eastern. We also get gas on this line at Hoopeston. The Illinois Natural carries gas at about 125 to 150 pounds pressure right after delivery. There is a reduction made by the Illinois Natural Gas Company after it is first brought into its mains.

There are some places where the Illinois Natural Gas Company makes as low a reduction in pressure as 95 to 100 pounds, but not to our company. Except at Quincy, there is no place in Illinois where the Illinois Natural Gas Company does not make a very substantial reduction of the pressure carried on the Panhandle Eastern lines immediately after they receive it. The reduction stations are all immediately adjacent to the Panhandle Eastern lines.

There is a further reduction in pressure made by the Illinois Natural Gas Company when gas is delivered to the Illinois local gas distributing utilities. At Taylorville we receive it at about 80 pounds and at Hoopeston at about 40 pounds.

Assuming at the Mattoon end that the proposed main is [fol. 24-38] installed and filled with gas, that there were no outlets other than at Mattoon, that the outlet at Mattoon were closed, and that during the day there were periods of an hour or two when there was no gas moving through that lateral, the gas moving through the Panhandle Eastern

main line would not cause the gas to move in this Mattoon lateral. If there are times when there was no demand at the outlet into our distribution system for gas, the gas in the Illinois Natural Gas Company's line would remain static and motionless.

The only information I have as to the ownership of the Panhandle Eastern or Illinois Natural Gas Company is what I have read in the papers. It is my understanding that the Columbia Oil & Gasoline Corporation is owned by the Columbia Gas & Electric Corporation. (Objection by Mr. Clark as to qualification of witness overruled.) It is my understanding that the Universal Gas Company is either owned by or has very definite contract relations with the Kentucky Natural Gas Company. (Same objection by Mr. Clark overruled.) It is my understanding that the Kentucky Natural Gas Company is completely owned by the Missouri-Kansas Pipe Line Company. (Same objection by Mr. Clark overruled.)

I understand that a substantial part of the gas we now get from the Universal Gas Company is taken off the lines of the Panhandle Eastern Pipe Line Company in Indiana, thrown into the line of the Universal in Indiana, and then piped back across the Indiana-Illinois line to our Company. [fol. 24-39] In the last month or so I have had conversations with a Mr. Hillman who represented himself as controlling the Universal Gas Company. From these conversations I got the impression that some influence, either in the directors or ownership, was seeking to compel us to continue to take gas from the Indiana source rather than from the Illinois Natural Gas Company. I, however, acquit Mr. Neuner or any of the present officers of any collusion, but not the operating force. I do not know whether the Universal Gas Company is affiliated in any way with the Panhandle Eastern Pipe Line Company.

Mr. Hillman stated to me and the President of our Company that such gas as was not sent to us from the lines of the Panhandle Eastern Pipe Line Company across the Indiana line was procured from the Kentucky Natural Gas Company, and that if the Universal could not get it all, it wanted as big a part as it could get.

All the gas which we obtained from the Illinois Natural Gas Company or its predecessor and all we will obtain for our Mattoon group will in turn be furnished to the ultimate consumers by us in our capacity as a gas public utility,

subject to the regulations, rules and rates established by the Illinois Commerce Commission.

Stipulation by counsel that the Respondent has rates on file with the Illinois Commerce Commission under which it offers to sell natural gas to distributing companies within its territory.

[fol. 24-40] CROSS-EXAMINATION OF MR. KELLY BY MR. CLARK

I have already stated that it would require the construction of about eighteen or twenty miles of line by the Illinois Natural Gas Company in order to supply us at Mattoon. The delivery to us by the Universal Gas Company is made right at the Illinois-Indiana line. We own the line from there to Paris. I understand that the Universal Gas Company obtains its supply of gas from the Kentucky Natural Gas Company and the Panhandle Eastern Pipe Line Company. I have been told by numerous people, including Mr. Hill and the local office of the Illinois Natural Gas that the Kentucky Natural Gas Company purchases gas from the Panhandle Eastern.

In the various conversations I have had with Mr. Neuner, our disagreement was primarily as to the method of procedure.

The statement I made concerning the proposed line to Mattoon was based purely upon an assumption that if the end of a line was closed, the gas in the lateral might stop while the gas in the main line would continue but I did not mean to infer that such a condition actually exists in the line at any point on the Illinois Natural system. If you closed the end of a main line, it would stop the gas. I do not know exactly the location of the regulators of pressure in the lateral lines of the Illinois Natural, but it is my information they are close to the main.

The pressure I gave at particular towns, or in the laterals leading to particular towns, did not vary greatly from those [fol. 24-41] given as general pressure carried in different lateral lines by Mr. Neuner. In Taylorville gas was delivered to the distributing company at 80 pounds but is not utilized by our customers at that pressure.

From notices in the paper, I understand that the Kentucky Natural Gas Company has discontinued buying gas in Illinois and putting it into its line. I understand that the Kentucky Natural is still receiving gas from Kentucky

and so far as I know the gas coming to Paris and Mattoon from this line could come either from Kentucky or Panhandle Eastern, or a mixture of the two.

RE-DIRECT EXAMINATION OF MR. KELLY BY MR. STEVENS

It was always Mr. Neuner's suggestion that we join with him first in an application to the Federal Power Commission for permission for the Illinois Natural Gas Company to serve us with gas. Our refusal to accede to his request to first go to the Federal Power Commission and our insistence that the proceeding be first brought before the Illinois Commerce Commission was explained to him as being that we were subject to the latter Commission and did not consider the Federal Power Commission as having jurisdiction over our company. We also feared if we acknowledged the jurisdiction of the Federal Power Commission by joining in that proceeding, that proceeding would be subject to appeal in the Federal Court in Washington and might be subject to very long litigation, and we would be [fol. 24-42] acquiescing in the jurisdiction of the Federal Power Commission over our Company.

RE-CROSS EXAMINATION OF MR. KELLY BY MR. CLARK

We consistently refused to first go before the Federal Power Commission to determine whether that Commission would actually exert jurisdiction. Mr. Neuner did consistently take the position that we would gain nothing by first going to the Illinois Commerce Commission without having the question settled as to whether we would be in contempt of the Federal Power Commission. We never questioned Mr. Neuner's good faith in the matter.

FURTHER RE-DIRECT EXAMINATION OF MR. KELLY BY MR. STEVENS

In answer to Mr. Neuner's suggestion that it might be considered contempt by the Federal Power Commission to first secure an order from the Illinois Commerce Commission, we proposed that an unexecuted contract be drawn and presented to the latter Commission.

Petitioner's Exhibit F, furnished to the Petitioner by the Respondent, was received in evidence and shows the range of Gauge pressures during the period May 1 to 7, 1939, for various Illinois towns. The first two columns on

said exhibit represent the pressures to which the Illinois Natural Gas Company reduces the gas received from the Panhandle Eastern Pipe Line Company at its reducing stations, located in proximity to the connection between the lines of the two companies. The third and fourth columns [fol. 24-43] represent the pressure at which the gas is delivered to the utility consumer or the various distributing companies located on these lateral lines. The showing for said week would be fairly representative for their general operation.

The following portion of the record in Case No. 26563 before the Illinois Commerce Commission was read into the record by Mr. Stevens:

"Mr. Neuner: The purpose to be accomplished by the present proceeding is the separation of the property and the business of Panhandle Illinois Pipeline Company to the end that the property and the business, which is purely intrastate and of a local public utility character, will be owned and operated by the Illinois Natural Gas Company, an Illinois corporation, operating at a public utility in this State and that the main line and compressing stations not used, useful or necessary in the conduct of a public utility business be transferred to Panhandle Eastern Pipe Line Company, a Delaware Corporation.

"Mr. Bay: Exhibit A, as a whole is a complete schedule of all of the properties now owned by Panhandle Illinois Pipeline Company and proposed to be transferred to Illinois Natural Gas Company which are useful in the conduct of the utility business in the State of Illinois.

"Question by Mr. Neuner: It is true, Mr. Bay, that Exhibit A attached to that contract is all of the property of Panhandle Illinois Pipeline Company exclusive of the main line and compressor station?

"Answer: That is true.

[fol. 24-44] Question: "I will ask you to state whether or not that schedule includes all of the Certificate of Convenience and Necessity heretofore granted to Panhandle Illinois or its predecessor in Illinois."

Answer: "It does."

Question: "So that under this contract the Illinois Natural will own all of the Certificates of Convenience and Necessity now owned by Panhandle Illinois?"

Answer: "That is true."

Question: "If and when the plan contemplated is approved by the Commission and the transfer of the property is effected, is it the intention that Illinois Natural file with the Commission rate schedules, rules and regulations and conditions of service for the rendition of natural gas service both directly and indirectly to customers in Illinois substantially identical with the rate schedules, rules and regulations and conditions of service of Panhandle Illinois now on file with the Commission and at present in effect?"

Answer: "That is the intention under this plan."

Question: "The points of delivery where the gas is to be delivered from Panhandle Eastern to Illinois Natural under this proposed contract is fixed at the points of connection of the lateral lines with the main line; is that correct?"

Answer: "That is right."

Question: "Is it the intention that the volumes delivered be also measured at those points of connection?"

Answer: "In instances, yes; in others, probably no, at this time. However, the general plan contemplates the use [fol. 24-45] of existing meters where they are located at the main pipeline and possibly additional meter installations where there is no such existing points of measurement as time goes on."

(Objection by Mr. Clark to statement of Mr. Neuner as being a conclusion of law and not in evidence overruled.)

FURTHER DIRECT EXAMINATION OF E. F. KELLY, WITNESS FOR PETITIONER, BY MR. STEVENS

The gas we receive from the Indiana Company varies from about 960 to 970 B.t.u. when it is being received from Kentucky up to about 1010 B.t.u. When it is received through the Universal Gas Company from the Panhandle Eastern. The B.t.u. content of the gas furnished by the Illinois Natural averages about 1010 to 1020.

The gas purchased from the Illinois Natural Gas Company averages about thirty-two cents per thousand cubic feet, whereas from the Universal Gas Company the price is a straight rate of thirty-seven and one-half cents, or an average difference of about five and one-half cents. If all the gas from the Universal Gas Company were purchased from the Illinois Natural Gas Company, it would be a saving to our company of about $11,600 per year, based on

1938 sales. If all the gas were purchased from the Illinois Natural, we would put into effect in the Mattoon group the rates now in effect at Quincy and a number of our other towns, which would result in a saving to the customer of about $12,000 a year. In addition to that saving the cus-
[fol. 24-46] tomers would also be getting gas with a higher B.t.u. We sell gas in that area by the therm, but it is assumed under the Commission's orders that all gas is 950 B.t.u. We adjust the gas on a basis of 960 B.t.u. for billing purposes. There would not be any improvement in the contents of the gas but the rate itself would be cheaper.

CROSS EXAMINATION OF MR. KELLY BY MR. CLARK

From the Illinois Natural Gas Company, we receive gas at Quincy, Canton, Lewistown, Havana, Pana, Tower Hill, Taylorville, Shelbyville and Hoopeston. We deliver to our domestic customers in those towns through the supply main running to the house at about six inch pressure or 3.47 ounces, which is the average pressure used by other utilities for that type of service. The street main pressure varies in different towns, we carry up to three or four pounds in smaller towns.

Memorandum filed July 18, 1939 on behalf of Petitioner by A. D. Stevens, its attorney.

Memorandum filed August 29, 1939 on behalf of Respondent by Glenn W. Clark, its attorney.

Reply Memorandum filed September 19, 1939 on behalf of Petitioner by A. D. Stevens, its attorney.

DECISION OF COMMISSION—November 30, 1939

Order entered by Illinois Commerce Commission on November 30, 1939 in Central Illinois Public Service Company v. Illinois Natural Gas Company, No. 27906, as follows:

"On May 22, 1939, the Central Illinois Public Service
[fol. 24-47] Company, an Illinois corporation, filed with the Commission a petition (in the nature of a complaint) against the Illinois Natural Gas Company, also an Illinois corporation, seeking an order from the Commission requiring the respondent to furnish complainant with wholesale natural gas service at or near the City of Mattoon, Coles County, Illinois.

"Pursuant to due notice as required by law and the rules and regulations of the Commission, hearings were held in the cause on June 6th and June 21st, 1939 at the Springfield, Illinois, offices of the Commission.

"It appears from the record that the complainant has for some years past been engaged in the business of supplying and distributing natural gas to the public at retail in the cities of Mattoon, Effingham, Paris and Charleston, and small intermediate communities, all in the State of Illinois; that Charleston with a population of about 8000, and Paris with a population of about 9000, are located respectively twelve and forty miles east of Mattoon which has a population of about 15000; and that Effingham with a population of about 5000, is located approximately thirty miles southwardly from Mattoon.

"It further appears that for many years prior to 1932, when complainant began serving said cities with natural gas, it served them with artificial gas from local plants, but in 1927, in order to obtain the economies of quantity manufacture in a centralized plant, it installed a four-inch transmission main from its Mattoon plant to Charleston, and the next year extended said main to Paris, and that two years later complainant installed a like four-inch main from its Mattoon plant to Effingham.

[fol. 24-48] "It further appears that since the substitution of natural for artificial gas service by the complainant, it has been receiving natural gas at a point near the City of Paris which it transmits through its four-inch main to Charleston, thence to Mattoon and thence to Effingham; that the complainant receives its supply of gas at Paris from the Indiana Consumers Company, a company over which this Commission has no control, and under such circumstances as to leave it dependent upon delivery only from hour to hour.

"It further appears that the complainant's main from Mattoon through Charleston to Paris was designed for operation at a pressure of only 100 pounds; that said main at such designed pressure lacks physical capacity to transmit natural gas from Paris in quantities required by complainant at Charleston, Mattoon and Effingham; that because the requirements of the last three named cities have outgrown the lines capacity, complainant is confronted with the necessity of either installing an additional main at a cost of approximately a quarter of a million dollars, or of

obtaining natural gas at Mattoon from respondent; that procurement of gas from respondent would not only insure continuity of supply, but would avoid the capital and operating expenses incident to the construction of an additional main and enable complainant to serve its customers in all of the aforesaid cities and the communities intermediate thereof with a gas of a higher b.t.u. content at lower rates.

"It further appears that the respondent, Illinois Natural Gas Company (hereinafter sometimes referred to as "Illinois Natural") is a subsidiary of the Panhandle Eastern Pipe Line Company (hereinafter sometimes referred to as "Panhandle Eastern") a Delaware corporation; that prior [fol. 24-49] to June 15, 1938, all of the physical property in Illinois now owned by respondent, and all the physical property now owned by Panhandle Eastern (excepting in both cases minor subsequent additions) was owned and operated by the Panhandle Illinois Pipe Line Company (hereinafter sometimes referred to as "Panhandle Illinois"), also an Illinois corporation and a subsidiary of Panhandle Eastern; that the property of Panhandle Illinois then embraced (1) a large high pressure gas main extending across the State of Illinois, from a point on the state line near Pleasant Hill, Pike County, Illinois, to a point near the Indiana-Illinois state line in Edgar County, Illinois, with incidental pressure-boosting equipment, and (2) a number of lateral mains leading from Illinois points on this high pressure main to the distribution systems of utilities operating in various Illinois cities, with the equipment incident to such laterals; that Panhandle Illinois carried on both the transmission of gas through its large high pressure main into and across the State of Illinois, and the transmission of gas through its laterals to local utilities as an Illinois public utility, under certificates of public convenience and necessity and in accordance with rates, rules, regulations and conditions of service, issued and approved by this Commission.

"It further appears that in February, 1938, the respondent company, Illinois Natural, and Panhandle Illinois filed with this Commission, as Docket No. 26553, a joint petition wherein they sought an order approving and authorizing the execution and carrying out of a three party contract providing for the transfer by Panhandle Illinois of its large high pressure main extending across the state and

its incidental boosting equipment, to Panhandle Eastern; [fol. 24-50] and the transfer, assignment and conveyance to respondent of all Panhandle Illinois' remaining property and assets, including the laterals and their incidental equipment and the business of supplying Illinois utilities; that under the terms of such contract, respondent was to take over so much of Panhandle Illinois' operations and business as comprised the rendering of gas service as a public utility within the State of Illinois, and to own and thenceforth operate all the property to be acquired by it, in the carrying on of a general gas public utility business within the State under the jurisdiction of this Commission in accordance with rates, rules, regulations and conditions of service approved by the Commission.

"It further appears that the purpose of the proceeding was represented to the Commission by both respondent and Panhandle Illinois to be "the separation of the property and business of Panhandle Illinois Pipe Line Company to the end that the property and business which is purely intrastate and of a local utility character, will be owned and operated by the Illinois Natural Gas Company, an Illinois corporation, operated as a public utility in this state, and that the main line and compressor stations not used, useful or necessary in the conduct of a public utility business be transferred to the Panhandle Eastern Pipe Line Company, a Delaware corporation."

"It further appears that in such proceeding the Commission was also asked to approve a contract between respondent and Panhandle Eastern for the furnishing by Panhandle Eastern to respondent of all gas required by respondent for resale by respondent to the several distributing companies then, or thereafter to be, served by it, delivery of the gas to respondent to be at the respective connections of respondent's laterals with the large high [fol. 24-51] pressure main to be acquired by Panhandle Eastern, up to which points ownership, control and possession of and responsibility for the gas would be in Panhandle Eastern, but at which points ownership and exclusive control, possession and responsibility should pass to respondent.

"It further appears that by order entered June 15, 1938, the Commission approved the carrying out of the aforesaid proposals, and issued to respondent the requisite certificates of convenience and necessity, and that thereafter

the proposed transactions were consummated and respondent thereupon began, and has since carried on, under rates, rules, regulations and conditions of service approved by this Commission, a public utility business in the furnishing of natural gas in Illinois to Illinois distributing gas public utilities for distribution by them in this State.

"It further appears that all gas handled or in any way dealt with by respondent is obtained by it from Panhandle Eastern under the before mentioned contract, and its terms expressly limit the gas to be delivered by Panhandle Eastern and received by respondent to that required in territory for which respondent has been, or shall be, granted certificates of convenience and necessity by this Commission; that such gas is delivered by Panhandle Eastern and received by respondent at the points of connection between Panhandle Eastern's main and respondent's laterals; that up to these points of delivery ownership, control, possession and responsibility are in Panhandle Eastern; that upon delivery at these points ownership and "exclusive" control, possession and responsibility pass to respondent; that the contract provides in detail for accurate measurement at points of delivery and requires [fol. 24-52] payment by respondent to Panhandle Eastern according to such measurement; that all physical property in any way devoted to the treatment and handling of the gas from the time of its delivery by Panhandle Eastern to respondent until its delivery by respondent to respondent's customers is owned and operated by respondent and located in Illinois; that all physical treatment and handling of the gas from the time of its delivery by Panhandle Eastern to respondent until its delivery by respondent to respondent's customers is done by respondent and occurs entirely within the state of Illinois; that no gas received by respondent moves, or is intended to move, outside of the State of Illinois and all is ultimately consumed within this State; that immediately upon its receipt of the gas from Panhandle Eastern, respondent reduces the pressure in each of its laterals to such amount as results in the most economical transportation commensurate with the requirements of its customers; that respondent further reduces the pressure at the termination of its laterals to meet its customer's needs and the gas is all handled by respondent in accordance with

rates, rules, regulations and conditions of service on file with and approved by this Commission.

"It further appears, and the respondent agrees, that the rendition of the service as requested by complainant would be profitable to respondent, and both in negotiations had with complainant prior to the beginning of this proceeding, and before the Commission during the progress of the hearings, the respondent stated its willingness to render the service provided it receives the necessary lawful authority to do so.

"Although there was no substantial disagreement between the parties as to the material facts established by the evidence, the respondent does challenge the complain- [fol. 24-53] ant's right to demand the service and the right of the Commission to compel its rendition, on the sole ground that respondent's operations from the time it receives the gas from Panhandle Eastern are a part of and constitute interstate commerce, and for that reason are under the jurisdiction and control of the Federal Power Commission and are therefore matters over which this Commission has no authority.

"It must be conceded that respondent's procurement of the gas at the respective points of delivery are interstate matters, but respondent's position that the interstate character which prevails to those points must be further extended and made to cover its later dealings with the gas subsequent to its receipt, is untenable in the light of the foregoing undisputed facts. It is true that the movement of the gas through respondent's laterals is caused by what remains, after respondent's reductions, of pressure supplied in effecting its prior interstate transmission, but such continuity of movement is, as is universally held by judicial authority, in no sense controlling, and may exist with respect to intrastate commerce as well as interstate, depending upon the particular facts. In this case the same pressure continues to move the gas to the burners of the patrons of respondent's customers, a movement intrastate beyond any doubt.

"Putting aside all question as to the extent of authority given the Federal Power Commission by the Natural Gas Act, it would seem that the record in this case so manifestly discloses respondent's operations subsequent to its receipt of the gas to be so completely local to Illinois, and so

wholly intrastate in character, as to preclude regulation or control by any Federal agency.

[fol. 24-54] "What constitutes interstate commerce is not a matter for determination by legal formula, but is to be determined from the facts individual to each case as it arises. "Interstate commerce is a practical conception and what falls within it must be determined on consideration of established facts and known commercial methods." The fact that a commodity is brought across state lines of itself raises no controlling implication that subsequent dealings with respect to it remain interstate matters. The highest judicial authorities are unanimous in the holding that the interstate character created by transportation across state lines may cease upon arrival at destination within a state, and be thereafter succeeded by a character wholly intrastate.

"The decisive question in this case is whether respondent's dealings and transactions with respect to the gas subsequent to its receipt at points of delivery disclose a termination of those dealings and transactions by which the gas is brought into Illinois and delivered to respondent by Panhandle Eastern, and the beginning and thenceforth carrying on of other new and different dealings and transactions with new and different parties which concern matters wholly confined to Illinois in which the interest local to this State is permanent.

"The evidence clearly indicates that respondent is engaged in two characters of business with respect to its gas. One is made up of its dealings and transactions with Panhandle Eastern in obtaining from that company the gas and its transmission to the various points of delivery in Illinois, and the other of its dealings and transactions in disposing of the gas to its Illinois customers after having received it. No difference is conceivable between respond-
[fol. 24-55] ent's present handling of the gas and its present dealings and transactions concerning it subsequent to its receipt, and those which would prevail were respondent receiving the gas from its own wells located at the respective points of receipt within this State. The purposes and business of respondent, disclosed by its actions and actual operations as well as by the avowed purpose and intention formerly declared by it to this Commission, clearly establish the closing of its interstate relations upon its receipt

of the gas, and the beginning of that point of dealings affecting only and relating solely to Illinois.

"The Commission having considered the evidence and briefs of the respective parties, and being fully advised in the premises, is of the opinion and finds:

(1) that it has jurisdiction of the subject matter of this proceeding and the parties herein;

(2) that the Central Illinois Public Service Company is an Illinois corporation, and is engaged in the business of furnishing natural gas service for public use in the cities of Mattoon, Paris, Charleston and Effingham and small communities intermediate thereof, and in so doing is a public utility within the meaning of Section 10 of "An Act concerning public utilities," in force July 1, 1921;

(3) that the aforesaid Central Illinois Public Service Company now serves the above mentioned cities and intermediate communities with natural gas procured near the City of Paris, Illinois, thence transmits it to the cities of Charleston, Mattoon and Effingham by means of a four-inch [fol. 24-56] transmission main of which the portion between Paris and Mattoon, a distance of approximately forty miles, has an age of eleven or more years; that said main was designed for operation at a pressure of 100 pounds; that said main at such designed pressure lacks physical capacity to transmit natural gas from Paris in quantities required by the Central Illinois Public Service Company at Charleston, Mattoon and Effingham and intermediate communities;

(4) that the natural gas now served by the Central Illinois Public Service Company in the cities of Paris, Charleston, Mattoon and Effingham and intermediate communities is procured near Paris from the Indiana Consumers Company under circumstances leaving the Central Illinois Public Service Company dependent upon delivery from hour to hour and from a company over which this Commission has no jurisdiction or control, and that to continue to supply Charleston, Mattoon and Effingham from such source would require the installation of an additional main from Paris to Mattoon at a cost of approximately a quarter of a million dollars;

(5) That the procurement of natural gas from Illinois Natural Gas Company at Mattoon for the aforesaid cities

and intermediate communities would not only make unnecessary the installation of an additional main between Mattoon and Paris, but would provide Central Illinois Public Service Company with natural gas of a higher b.t.u. than that now received by it and would enable it to serve [fol. 24-57] its customers in said cities and communities with natural gas service at lower rates;

(6) that the natural gas service sought by the Central Illinois Public Service Company can be rendered by the Illinois Natural Gas Company with a reasonable profit to the latter company;

(7) that the Illinois Natural Gas Company, is an Illinois corporation engaged in the business of furnishing natural gas at wholesale to Illinois natural gas distributing companies in the general territory extending across the central portion of this State from the Mississippi River near Pleasant Hill, Pike County, Illinois, to a point on the Indiana-Illinois state line in Edgar County, Illinois, pursuant to certificates of convenience and necessity granted by this Commission and in accordance with rates, rules, regulations and conditions of service filed with and approved by this Commission, and is a public utility within the meaning of Section 10 of "An Act concerning public utilities," in force July 1, 1921;

(8) that the Illinois Natural Gas Company procured the natural gas so dealt with by it from a large gas transmission main owned and operated by the Panhandle Eastern Pipe Line Company, a Delaware corporation, extending across the State of Illinois from a point on the state line near Pleasant Hill, Pike County, Illinois, to a point on the Indiana-Illinois state line in Edgar County, Illinois, through which said last named company transmits natural gas across the Illinois-Missouri state line into the State of Illinois and there delivers it to the Illinois Natural Gas [fol. 24-58] Company at various points of connection between its large transmission line and lateral mains, owned by the Illinois Natural Gas Company, and used by the latter company exclusively in the transportation of such natural gas in Illinois to customers of such latter company, at which aforementioned points of connection ownership and exclusive control, possession and responsibility vest in the said Illinois Natural Gas Company;

(9) that immediately upon its receipt of natural gas from the Panhandle Eastern Pipe Line Company, the Illinois Natural Gas Company reduces the pressure in each of its laterals to such amount as results in the most economical transportation commensurate with the requirements of its customers, and that respondent further reduces the pressure at the termination of its laterals to meet the requirements of its customers with respect thereto;

(10) that each and every of Illinois Natural Gas Company's handling, dealings, operations and transactions with respect to such natural gas subsequent to its purchase and receipt by said last named company from the Panhandle Eastern Pipe Line Company take place within and are of paramount interest to the State of Illinois, and are intrastate, and in no sense interstate, in character;

(11) that the public convenience and necessity requires that the prayer of the petition of the Central Illinois Public Service Company should be granted and that, the Illinois Natural Gas Company should be ordered, directed [fol. 24-59] and authorized to proceed with reasonable dispatch to make such installations and connections with the Central Illinois Public Service Company's natural gas system at or near the City of Mattoon, Illinois, as shall be adequate for the supplying by Illinois Natural Gas Company to the Central Illinois Public Service Company of the latter company's natural gas requirements at the cities of Mattoon, Charleston, Paris and Effingham and the communities intermediate thereof, and that a certificate of public convenience and necessity should be issued to the Illinois Natural Gas Company to make such installations and connections and engage in such wholesale natural gas business, and that beginning with the construction of such installations and connections the said Illinois Natural Gas Company should report, in writing, at thirty day intervals, to the Secretary of this Commission, at Springfield, Illinois, the progress being made with the construction of such installations and connections;

(12) that upon completion of said installations and connections the Illinois Natural Gas Company should begin, and thereafter until further order of this Commission continue, to supply the Central Illinois Public Service Company at said connections with natural gas sufficient in

quantities to meet said latter company's needs at the aforesaid cities of Mattoon, Charleston, Paris and Effingham and intermediate communities under the rates, rules, regulations and conditions of service which the said Illinois Natural [fol. 24-60] Gas Company now has, or may hereafter have, on file with and approved by this Commission; and

(13) that the Commission should retain jurisdiction of the subject matter of this proceeding and the parties hereto, for the purpose of entering such other or further orders as the Commission may deem meet.

"It Is Therefore Ordered by the Commission that the prayer of the petition of the Central Illinois Public Service Company be, and it is hereby, granted, and that the Illinois Natural Gas Company be, and it is hereby, ordered, directed and authorized to proceed with reasonable dispatch to make such installations and connections with the Central Illinois Public Service Company's natural gas system at or near the City of Mattoon, Illinois, as shall be adequate for the supplying by Illinois Natural Gas Company to the Central Illinois Public Service Company of the latter company's natural gas requirements at the cities of Mattoon, Charleston, Paris and Effingham and the communities intermediate thereof, and that a certificate of public convenience and necessity be, and it is hereby ordered issued to the Illinois Natural Gas Company to make such installations and connections and engage in such wholesale natural gas business, and that beginning with the construction of such installations and connections the said Illinois Natural Gas Company shall report, in writing, at thirty day intervals, to the Secretary of this Commission at Springfield, Illinois, the progress being made with the construction of such installations and connections.

"It Is Further Ordered that upon completion of said installations and connections the Illinois Natural Gas Com- [fol. 24-61] pany shall begin and thereafter until further order of this Commission continue to supply the Central Illinois Public Service Company at said connections with natural gas sufficient in quantities to meet said latter company's needs at the aforesaid cities of Mattoon, Charleston, Paris and Effingham and intermediate communities under the rates, rules, regulations and conditions of service which the said Illinois Natural Gas Company now has, or may

hereafter have, on file with and approved by this Commission.

"It Is Further Ordered that the Commission retain jurisdiction of the subject matter of this proceeding and the parties hereto, for the purpose of entering such other or further orders as the Commission may deem meet."

RESPONDENT'S PETITION FOR REHEARING—Filed Dec. 28, 1939

Petition of Respondent for Rehearing, filed December 28, 1939, states in part as follows:

"2. That this Commission was without jurisdiction to hear and determine the matter in controversy or to enter the order dated November 30, 1939 in said proceeding because respondent's operations and business are wholly interstate in character and as to all matters in controversy in the above entitled proceeding are subject to the exclusive jurisdiction of the Federal Power Commission under the Natural Gas Act, being 52 Stat. 821-33.

"3. That the Illinois Commerce Commission Act of June 29, 1921 is invalid insofar as it may authorize the order herein entered and said order in invalid in that said Act and the order entered thereunder would interfere with and place a burden upon interstate commerce in contravention of Article I, Section 8, Clause 3 of the Constitution of the United States, being the commerce clause thereof.

[fol. 24-62] "4. That the Illinois Commerce Commission Act of June 29, 1921 is invalid insofar as it may authorize the order herein entered and said order is invalid in that said Act and order would take the property of respondent without due process of law by requiring it to construct a pipe line into a territory already being served by an interstate natural gas company, which respondent cannot lawfully do without obtaining a certificate of convenience and necessity from the Federal Power Commission under the provisions of said Natural Gas Act and which, if done without such authority, would cause respondent to incur liability to heavy penalties under said Natural Gas Act and to a probable loss of its investment in the pipe line ordered to be constructed.

"5. That the order is unreasonable and unlawful in that while it directs respondent to make connections with peti-

tioner's pipe line and to supply natural gas to meet petitioner's needs in certain Illinois communities, it does not direct petitioner to purchase from respondent, or if it does so direct by implication, it does not direct that petitioner purchase from respondent the entire requirements of said communities. Further, if by implication said order does direct petitioner to purchase exclusively from respondent the entire natural gas requirements of said communities, it fails to make any provision for such continuity of purchase by petitioner as to protect respondent by reasonably insuring the amortization of an investment of approximately $120,000.00 which respondent would be required to make in order to comply with said order.

"6. That the Commission's findings of fact with respect to reduction of pressures by respondent are contrary to the evidence.

[fol. 24-63] "7. That the conclusions of law of the Commission to the effect that respondent's business and operations constitute intrastate commerce are not supported by and are contrary to the evidence."

Proof of service of Petition of Respondent for rehearing.

ORDER DENYING PETITION FOR REHEARING—Jan. 3, 1940

Petition for rehearing denied January 3, 1940.

NOTICE OF APPEAL TO CIRCUIT COURT

Notice of appeal filed by respondent from order entered November 30, 1939 to the Circuit Court of Coles County, Illinois, on January 24, 1940.

Rates, Rules and Regulations for natural gas service filed by the Illinois Natural Gas Company with the Illinois Commerce Commission, issued June 30, 1938 and applying to the territory served directly by said Company in Illinois.

PETITIONER'S EXHIBIT "A"

Order of the Illinois Commerce Commission, entered June 18, 1936, in the matter of the application by the Central Illinois Public Service Company for approval of contract entered into by it with the Indiana Consumers Gas & By-Products Company, April 30, 1932, for natural

gas to be furnished at Mattoon, Charleston, Paris and Effingham and adjacent municipalities, being Petitioner's Exhibit A. Said order provided that the proposed contract with the Indiana Consumers Gas & By-Products Company be disapproved and that the Petitioner submit to the Commission a plan for obtaining a supply of natural gas sufficient to meet its reasonable future requirements in the above named cities and communities at an early date.

PETITIONER'S EXHIBIT "B"

Order of the Illinois Commerce Commission, entered June 15, 1938, in the matter of the transfer, assignment and conveyance by the Panhandle Illinois Pipe Line Company of all [fol. 24-64] of its properties and assets to Illinois Natural Gas Company and Panhandle Eastern Pipe Line Company (No. 26563), being Petitioner's Exhibit B. Said order provides in part as follows:

"• • • that Panhandle Illinois Pipe Line Company now owns and operates a system of gas pipe lines, compressor stations, meters and regulator stations and appurtances and facilities used in connection with the operation thereof within the State of Illinois; that said petitioner is now engaged in the business of purchasing, transporting, selling and furnishing natural gas to public utilities within the State of Illinois and to other consumers of natural gas within said state, and is also engaged in the business of transporting natural gas across the State of Illinois, • • •; that all of the gas transported, sold and delivered by said petitioner • • • is purchased and received by said petitioner from Panhandle Eastern Pipe Line Company, its parent corporation.

• • • • • • •

"It further appears • • • a contract was made and entered into between petitioner, Panhandle Illinois Pipe Line Company, petitioner Illinois Natural Gas Company and Panhandle Eastern Pipe Line Company • • • under the terms of which petitioner, Panhandle Illinois Pipe Line Company contracted and agreed to transfer, assign and convey to Illinois Natural Gas Company its lateral pipe lines, meter and regulator stations, the rights of way, grants, easements, licenses and permits under which said lateral lines and properties were constructed, • • •;

that a full and complete description of the property and assets which said Panhandle Illinois Pipe Line Company has so agreed to transfer, assign and convey to Illinois Natural Gas Company is contained in * Exhibit "A"*; [fol. 24-65] that under the terms of said contract Illinois Natural Gas Company * contracted and agreed that in consideration of the transfer, assignment and conveyance of said property and assets to it by said Panhandle Illinois Pipe Line Company to issue to said Panhandle Illinois Pipe Line Company all of Illinois Natural Gas Company's authorized capital stock consisting of 28,000 shares of no par value; that under the terms of said contract it is further provided that simultaneously with the transfer, assignment and conveyance of the aforesaid property to Illinois Natural Gas Company, petitioner, Panhandle Illinois Pipe Line Company will transfer, assign and convey in liquidation to Panhandle Eastern Pipe Line Company, a Delaware corporation, all of the remainder of its properties and assets of every kind and description, of whatsoever character and wheresoever situated, which said properties so to be transferred to Panhandle Eastern Pipe Line Company are specifically described in * Exhibit "B" * * *."

"It further appears that upon consummation of the transfer, assignment and conveyance of all of the property and assets of Panhandle Illinois Pipe Line Company under the terms and provisions of said contract, Illinois Natural Gas Company proposes to enter into a contract with its then parent corporation, Panhandle Eastern Pipe Line Company, for a supply of natural gas of adequate quantities and proper heating value and purity to enable it to properly carry out its duties and obligations as a gas public utility within the State of Illinois; that under the terms of said proposed contract delivery of natural gas to said Illinois Natural Gas Company will be made at the points of connection of any present or future spur or lateral lines or farm taps of Illinois Natural Gas Company with the pipe line or lines of Panhandle Eastern Pipe Line Company.

[fol. 24-66] "The Commission * * * is of the opinion and finds:

"(6) that on the 18th day of February, 1938 a contract was made and entered into between Panhandle Illinois Pipe Line Company, Illinois Natural Gas Company and

Panhandle Eastern Pipe Line Company * * * under the terms of which Panhandle Illinois Pipe Line Company has agreed to transfer, assign and convey to Illinois Natural Gas Company, an Illinois corporation, the properties and assets owned by it, used, useful and necessary exclusively in the conduct of a general gas public utility business in Illinois, a description of which property and assets is contained in the schedule hereinabove referred to, marked Exhibit 'A' * * *; that under said contract Illinois Natural Gas Company agreed to issue to Panhandle Illinois Pipe Line Company all of its authorized capital stock consisting of 28,000 shares of no par value; that under the terms of said contract Panhandle Illinois Pipe Line Company further agreed that simultaneously with the transfer, assignment and conveyance of said properties described in Exhibit 'A' attached hereto, to Illinois Natural Gas Company, it would transfer, assign and convey to Panhandle Eastern Pipe Line Company, a Delaware corporation, all the remainder of its properties and assets, consisting of that part of the properties and assets of Panhandle Illinois Pipe Line Company not used exclusively in the furnishing of gas to consumers and other public utilities in the State of Illinois; * * *.

"It Is Further Ordered that petitioner, Illinois Natural Gas Company, is hereby authorized to enter into a gas contract with Panhandle Eastern Pipe Line Company for a supply of natural gas for resale within the State of Illinois, * * *."

[fol. 24-67] PETITIONER'S EXHIBIT "C"

Letter from G. J. Neuner, Vice President of Illinois Natural Gas Company, to Central Illinois Public Service Company, Springfield, Illinois, attention of E. F. Kelly, Vice President, dated May 4, 1939, being Petitioner's Exhibit C, as follows:

"Reference is made to your request that we construct a pipe line from a point on the main line of Panhandle Eastern Pipe Line Company near Tuscola, Illinois, to a point at or near the City of Mattoon, Illinois, and make available to you at the latter point a supply of natural gas for all of your gas requirements for resale to your customers, present and prospective, in Mattoon, Effingham, Charleston, and

other communities and customers (except the City of Paris) connected to your existing pipe line and distribution systems in said cities. We understand that you are now being supplied with natural gas for resale in said cities and communities by another pipe line company and that such deliveries are made on a day to day basis, but that you desire to discontinue purchasing gas from said source of supply because you contend, among other things, that said service is inadequate for your purposes.

"We have made an analysis of the facts available to us and have determined that the present and potential future markets in the above-named cities and communities probably are sufficient to justify the capital expenditures necessary in the construction of the pipe line in question. We desire to advise you that subject to the approval of our Board of Directors we are willing to construct the necessary pipe line to connect with your pipe line and distribution system at Mattoon and to furnish natural gas to you [fol. 24-68] for all of your gas requirements for resale in the above-mentioned cities and communities if the same can be accomplished legally, such sale and delivery to be made at our regular filed rates and subject to our filed rules, regulations, and conditions of service, and to continue for a period of not less than ten years.

"As you know, during the year 1938, the Congress of the United States enacted the 'Natural Gas Act' under which natural gas companies, as defined in the act, were made subject to regulation by the Federal Power Commission. Said Act provides in part as follows:

" 'Section 7 (c). No natural gas company shall undertake the construction or extension of any facilities for the transportation of natural gas to a market in which natural gas is already being served by another natural gas company, or acquire or operate any such facilities or extensions thereof, or engage in transportation by means of any new or additional facilities, or sell natural gas in any such market, unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity require or will require such new construction or operation of any such facilities or extensions thereof.'

Recently, we received a letter from the Federal Power Commission notifying us that the Illinois Natural Gas Company is a natural gas company within the meaning of the Natural Gas Act, and is required to comply with the provisions of said Act.

[fol. 24-69] "In view of the fact that another pipe line company is now serving gas in this territory and of the position taken by the Federal Power Commission, it is our opinion that before we can make any commitment to build the line in question and undertake to supply natural gas to you for resale in these several cities, it will be necessary that a certificate of convenience and necessity be procured from the Federal Power Commission authorizing us to do so.

"As you know, the Illinois Commerce Commission has been exercising jurisdiction over the operations of this company for several years. Whether the Illinois Commerce Commission or the Federal Power Commission now has jurisdiction is a question which is of vital importance in this and in other matters affecting our operations. We think this question should and reasonably can be determined in this case. Since most of the facts to support an order granting a certificate of public convenience and necessity in this case are within your knowledge and not in our possession, we think your cooperation before the Federal Commission is necessary. If you will indicate your willingness to cooperate and advise us that in the event a certificate is granted by the Federal Power Commission you will contract to purchase natural gas from us for resale in said several cities and communities on the basis above mentioned, we will undertake to prepare and file the necessary application before the Federal Power Commission for determination of (a) the question of whether the Federal Power Commission has jurisdiction of Illinois Natural Gas Company, and if it has such jurisdiction, then (b) the question of granting [fol. 24-70] to Illinois Natural Gas Company a certificate of convenience and necessity to construct the necessary facilities and serve natural gas to you for resale in the aforesaid cities and communities."

PETITIONER'S EXHIBIT "D"

Letter from the Central Illinois Public Service Company to the Illinois Natural Gas Company, dated May 8, 1939, being Petitioner's Exhibit D, as follows:

"Acknowledgment is made of receipt of your letter of May 4 relative to our request that you furnish us at Mattoon, for a period of not less than ten years and subject in all respects to your regularly filed applicable rates, rules, regulations and conditions, the natural gas required by us for distribution and resale in the cities of Mattoon, Charleston, Paris and Effingham and intermediate communities adjacent to our pipe lines connecting those cities.

"We are pleased to learn from your letter that an analysis of the present and potential markets in the above named cities and communities has led you to abandon the opposition to the furnishing of this service advanced by your predecessor, the Panhandle Illinois Pipe Line Company, and that you are now willing to furnish such service 'if the same can be accomplished legally.'

"The question whether you can legally commit your company to render this service without first receiving authority so to do from the Federal Power Commission is one which we, unfamiliar as we are with whatever relationships may exist between your company and others which might bring you within the jurisdiction of that body, cannot of course [fol. 24-71] undertake to pass upon; but it is at least premature inasmuch as we have at no time asked of you any commitment of any kind unless approval thereto shall have first been granted by every governmental agency, State or Federal, having jurisdiction in the premises. You will recall that at all times and repeatedly during our recent conferences we offered to have any contract or arrangement for the proposed service expressly conditioned upon its approval by such governmental authorities as might be found necessary. You will also recall that at the last conference the suggestion was made by us that only an unsigned draft of the terms of an agreement satisfactory to both parties be prepared and presented to the Illinois Commerce Commission for its approval, but subject in all respects in its taking effect to additional approval by other authority.

"Inasmuch as we are directly under the control of the Illinois Commerce Commission, and you appear at most to be uncertain as to that body's jurisdiction over the proposed service, it seems to us beyond question that the orderly and time-saving procedure would be to first apply for the approval of that body, leaving you, in the event such approval is obtained, free to apply for any further approval from any other body or agency having authority in the

premises, unhampered in any way by any commitment if such further approval can not be obtained. You will recognize at once that should the Illinois Commission fail to give approval, all further effort for approval from other sources would be eliminated."

[fol. 24-72] PETITIONER'S EXHIBIT "E"

Letter from Illinois Natural Gas Company to Central Illinois Public Service Company, dated May 11, 1939, being Petitioner's Exhibit E, in part as follows:

"• • • For the reasons mentioned in my letter of May 4th, we do not consider it advisable to follow a procedure which will involve the submission of a form of agreement in this matter. However, it seems to us that if you wish to proceed before the Illinois Commerce Commission in advance of the filing of any application before the Federal Power Commission by our company, our letter of May 4th should be sufficient for your purpose."

PETITIONER'S EXHIBIT "F"

Range of Gauge Pressures of the Illinois Natural Gas Company during the period May 1 to 7, 1939, being Petitioner's Exhibit F, which shows the minimum gauge pressures carried in the various lateral lines of Respondent, varying from 38 pounds to 173 pounds, and also shows minimum gauge pressures at which natural gas is delivered by Respondent to the various distributing companies, varying from 15 pounds to 91 pounds.

RESPONDENT'S EXHIBIT No. 1

Gas Contract between the Panhandle Eastern Pipe Line Company and Illinois Natural Gas Company, dated as of June 30, 1938, being Respondent's Exhibit 1.

RESPONDENT'S EXHIBIT No. 2

Map of the Main Transmission System of the Panhandle Eastern Pipe Line Company and Illinois Natural Gas Company, being Respondent's Exhibit 2.

(Here follows 1 photolithograph, side folio 73)

RESPONDENT'S EXHIBIT NO.2

MAIN TRANSMISSION SYSTEM
OF
PANHANDLE EASTERN PIPE LINE COMPANY
AND
ILLINOIS NATURAL GAS COMPANY
(A wholly owned subsidiary)

45 0 25 50 75 100 125 150 175 200
Scale of Miles

SOUTH DAKOTA
NEBRASKA
COLORADO
KANSAS
IOWA
ILLINOIS
MISSOURI
L. MICHIGAN

South Platte River
Platte River
Republican River
Solomon River
Smoky Hill River
Kansas (Kaw) River
Missouri River
Des Moines River
Illinois River
Rock River
Arkansas River
North Canadian River

CHICAGO
PEORIA
CANTON
LINCOLN
HOOPESTON
DANVILLE
CHAMPAIGN
URBANA
QUINCY
SPRINGFIELD
JACKSONVILLE
DECATUR
PALMYRA
HANNIBAL
New London
MOBERLY
LIBERTY
KANSAS CITY
TOPEKA
Houstonia
New Franklin
FAYETTE
Centralia
CENTRALIA
FULTON
JEFFERSON CITY
LOUISBURG (C)
OLPE (C)
HAVENA (C)
HUTCHINSON
WICHITA
GREENSBURG (C)
HUGOTON GAS FIELD
ELKHART
BERN (C)
AMARILLO
Beaver
Burns
Preston
Luka
Pleasant Hill (C)
Glenarm (C)
Tuscola (C)
Taylorville
Wellsville
Greenville
Edwardsville
St. Louis
E. St. Louis
Columbia
Tipton
Centerview
Warrensville

47.24 Mi. 24"
71.1 Mi. 22"
70.6 Mi. 22"
15.24 Mi. 22"
14.50 Mi. 22"
44.60 Mi. 20"

Note: Lateral lines to Chrisman, Tuscola, Roadhouse, Whitehall and Pittsfield owned by distribution Companies

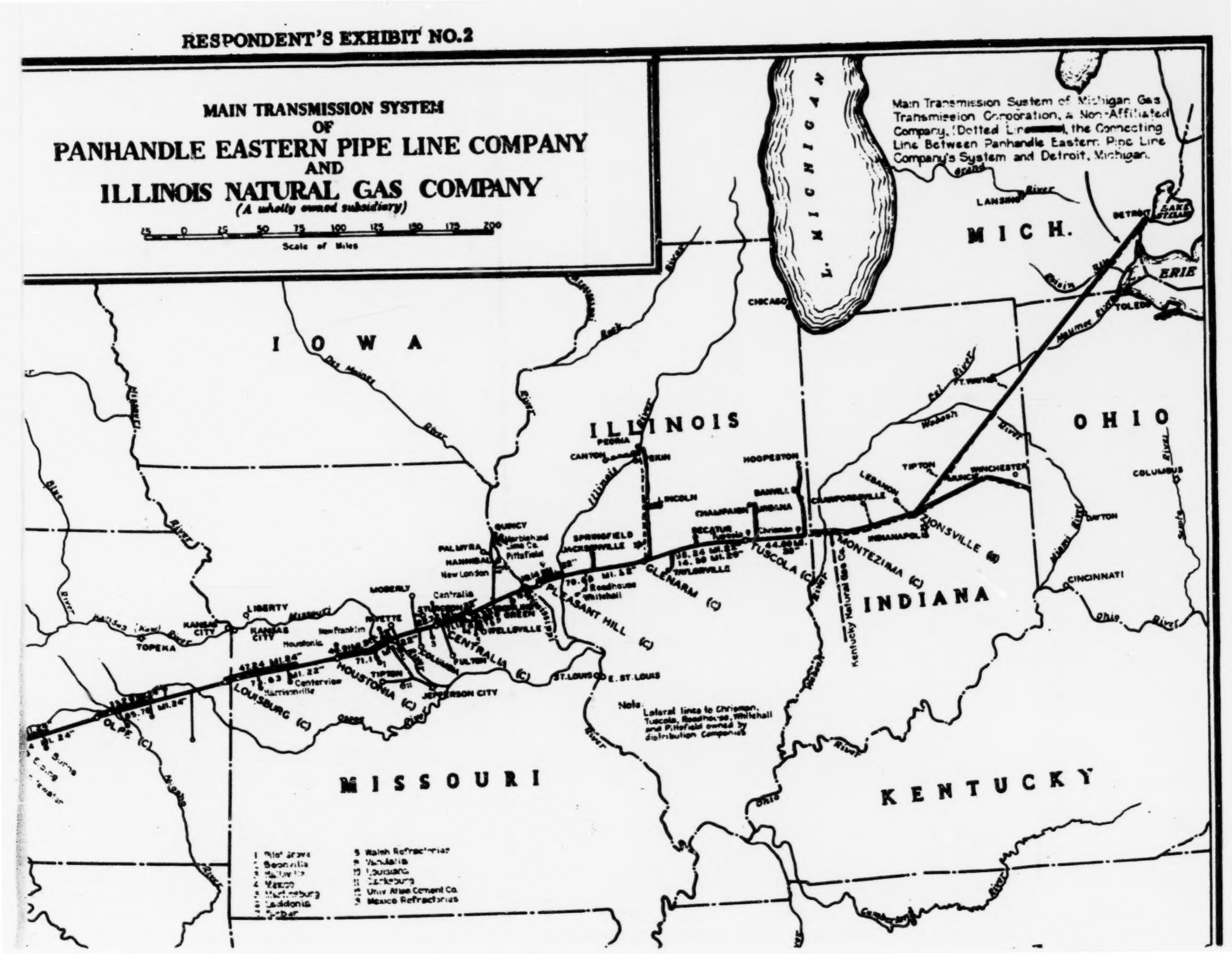
1 Pilot Knob
2 Steelville
3 Valley Ply
4 Vulcan
5 Martinsburg
6 Laddonia
7 Zeiber
8 Walsh Refractories
9 Vandalia
10 Louisiana
11 Clarksburg
12 Univ Atlas Cement Co.
13 Mexico Refractories

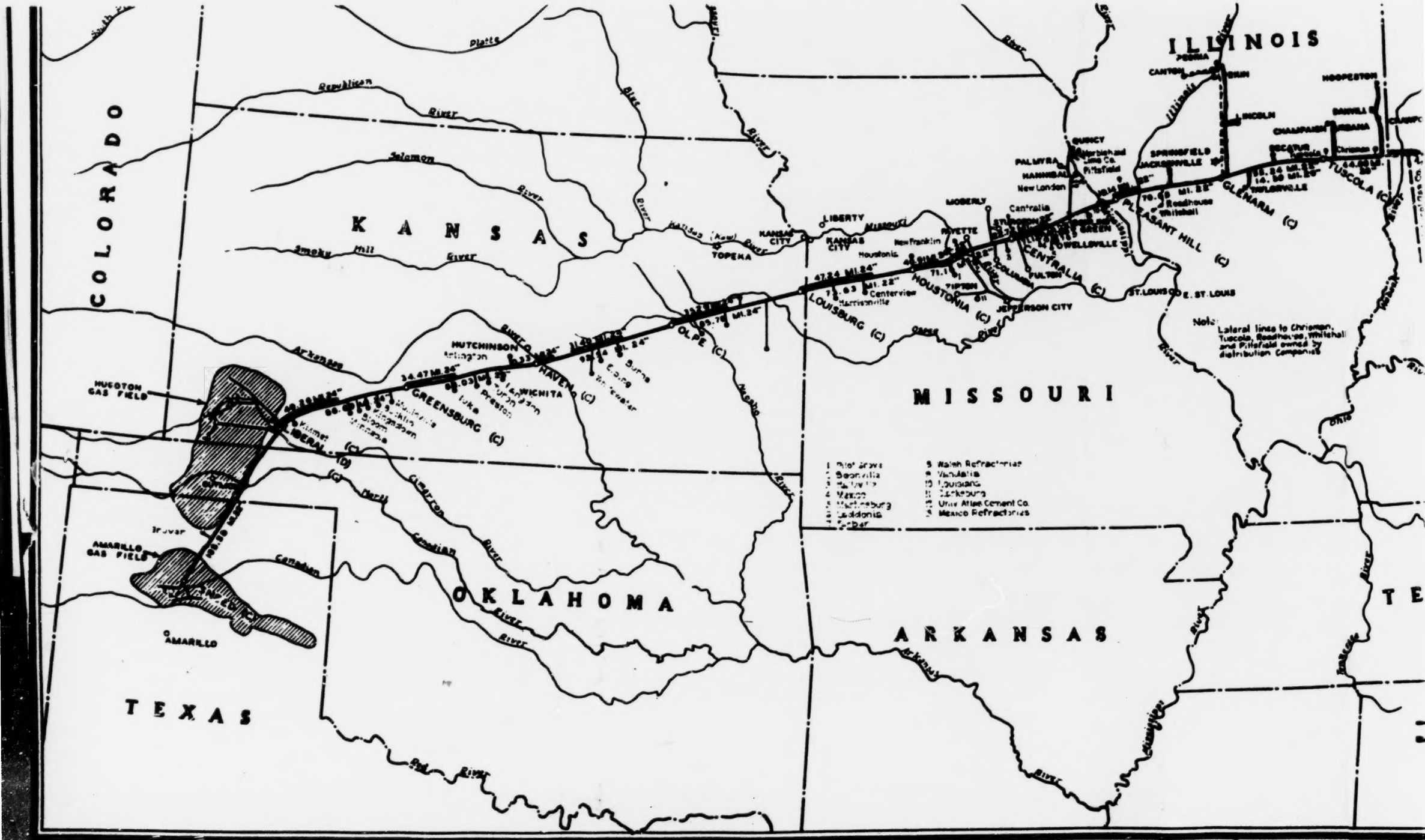
RESPONDENT'S EXHIBIT NO.2

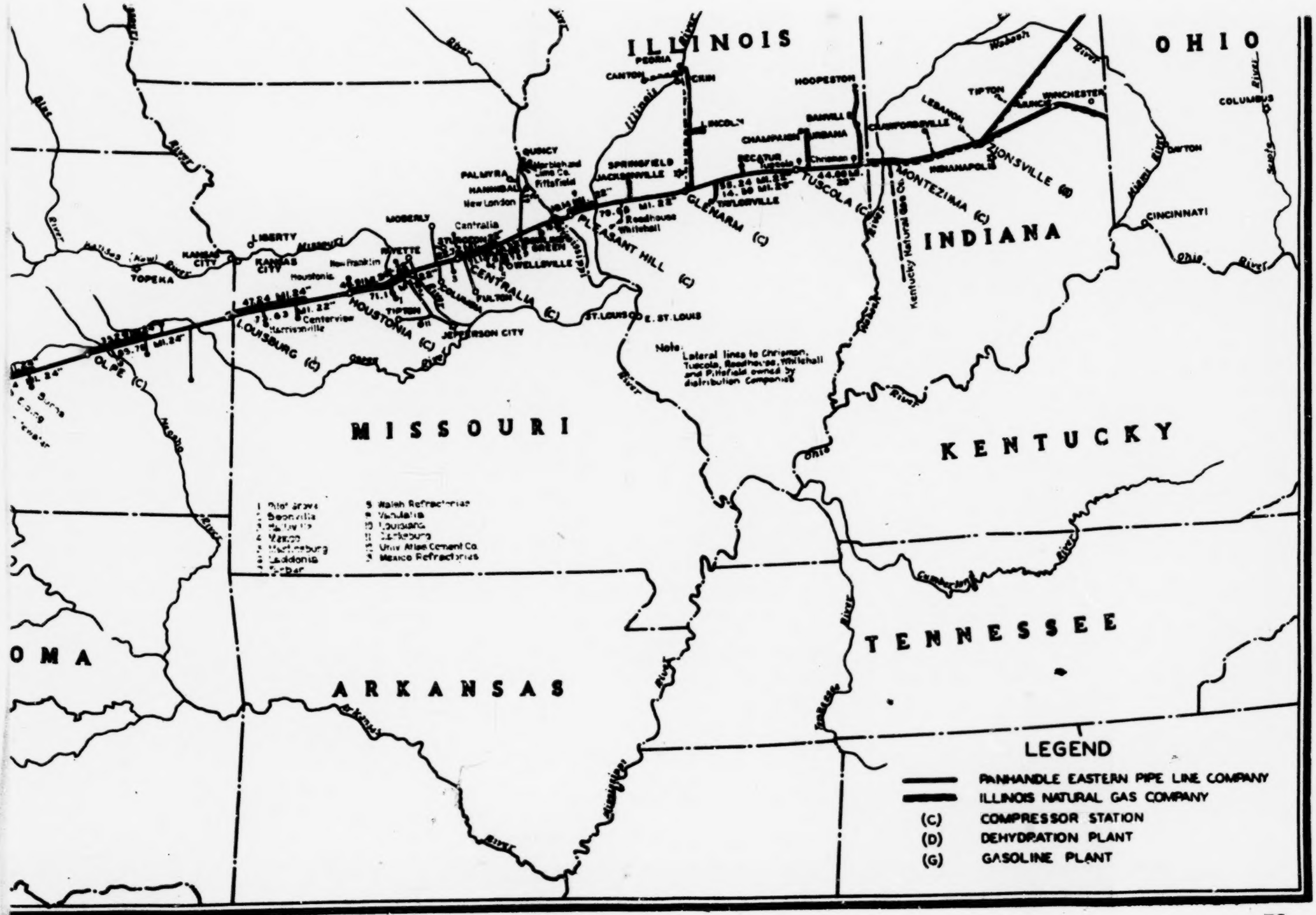
MAIN TRANSMISSION SYSTEM OF PANHANDLE EASTERN PIPE LINE COMPANY AND ILLINOIS NATURAL GAS COMPANY

(A wholly owned subsidiary)

Scale of Miles




COLORADO
KANSAS
OKLAHOMA
TEXAS
MISSOURI
ARKANSAS
ILLINOIS
Republican River
Solomon River
Smoky Hill River
Arkansas River
Platte River
Kansas (Kaw) River
Missouri River
Canadian River
Red River
Ohio River
Mississippi River
Cumberland River
Tennessee River
HUGOTON GAS FIELD
AMARILLO GAS FIELD
AMARILLO
HUTCHINSON
WICHITA
GREENSBURG (C)
LIBERAL (C)
HAVEN (C)
OLPE (C)
TOPEKA
KANSAS CITY
LIBERTY
LOUISBURG (C)
HOUSTONIA (C)
JEFFERSON CITY
CENTRALIA (C)
PLEASANT HILL (C)
GLENARM (C)
TUSCOLA (C)
ST. LOUIS
E. ST. LOUIS
QUINCY
PALMYRA
HANNIBAL
SPRINGFIELD
JACKSONVILLE
MOBERLY
Centralia
Houstonia
Harrisonville
Centerview
New Franklin
FAYETTE
FULTON
WELLSVILLE
PEORIA
CANTON
LINCOLN
CHAMPAIGN
DANVILLE
HOOPESTON
Note: Lateral lines to Chrisman, Tuscola, Readhouse, Whitehall and Pittsfield owned by distribution companies
1 Pilot Knob
2 Beaverville
3 Valley
4 Wellsburg
5 Martinsburg
6 Laddonia
7 Portage
8 Walsh Refractories
9 Vandalia
10 Louisiana
11 Clarksburg
12 Universal Atlas Cement Co.
13 Mexico Refractories


ILLINOIS
OHIO
INDIANA
MISSOURI
KENTUCKY
TENNESSEE
ARKANSAS
OMA
PEORIA
CANTON
CRIN
HOOPESTON
TIPTON
WINCHESTER
LEBANON
CLAMPORDSVILLE
COLUMBUS
DAYTON
CINCINNATI
QUINCY
PALMYRA
HANNIBAL
New London
SPRINGFIELD
JACKSONVILLE
LINCOLN
CHAMPAIGN
URBANA
DANVILLE
DECATUR
Lincoln
Chrisman
INDIANAPOLIS
ZIONSVILLE
MONTEZUMA (C)
TUSCOLA (C)
GLENARM (C)
Roadhouse
Whitehall
PLEASANT HILL (C)
MOBERLY
Centralia
LIBERTY
KANSAS CITY
TOPEKA
RAYETTE
New Franklin
Houstonia
CENTRALIA (C)
WELLSVILLE
FULTON
HOUSTONIA (C)
Centerview
Harrisonville
LOUISBURG (C)
JEFFERSON CITY
ST. LOUIS
E. ST. LOUIS
OLPE (C)
Kentucky Natural Gas Co.
Note: Lateral lines to Chrisman, Tuscola, Roadhouse, Whitehall and Pittsfield owned by distribution Companies
Walsh Refractories
Vandalia
Louisiana
Clarksburg
Univ Atlas Cement Co.
Mexico Refractories
LEGEND
PANHANDLE EASTERN PIPE LINE COMPANY
ILLINOIS NATURAL GAS COMPANY
(C) COMPRESSOR STATION
(D) DEHYDRATION PLANT
(G) GASOLINE PLANT

[fol. 24-74] RESPONDENT'S EXHIBIT No. 3

Order No. 53 of the Federal Power Commission, dated July 5, 1938, designating the time for filing of schedules of rates and charges under Section 4(c) of the Natural Gas Act, being Respondent's Exhibit 3.

RESPONDENT'S EXHIBIT No. 4

Letter from Leon M. Fuquay, Secretary of the Federal Power Commission, to the Illinois Natural Gas Company, dated April 18, 1939, which is as follows:

"Further reply is made to your letter of March 14, 1939 regarding the jurisdiction of this Commission over the Illinois Natural Gas Company, and the necessity for the filing of the rate schedules of that company with the Federal Power Commission.

"A report filed by the Illinois Natural Gas *Gas* Company pursuant to Order No. 51 states that all natural gas transported and sold by the Illinois Natural Gas Company is purchased from Panhandle Eastern Pipe Line Company, and that delivery is made to your company at several points in the State of Illinois from the main transmission line of the Panhandle Eastern Pipe Line Company.

"Information on file with the Commission indicates that the gas purchased from the Panhandle Eastern Pipe Line Company in Illinois is transported in interstate commerce by that company from producing fields in Texas and Oklahoma. It follows, therefore, that the Illinois Natural Gas Company is engaged in the transportation of natural gas in interstate commerce, and the sale in interstate commerce of natural gas for resale for ultimate public consumption. [fol. 24-75] "The Illinois Natural Gas Company is, therefore a natural gas company within the meaning of the Natural Gas Act and is required to comply with the provisions of said Act, including the filing of rate schedules."

Order of Circuit Court of Coles County entered February 21, 1940 in the cause of Central Illinois Public Service Company v. Illinois Natural Gas Company, No. 2179, being an appeal from the Illinois Commerce Commission, suspending the order of said Commission dated November 30, 1939.

ORDER OF CIRCUIT COURT SUBMITTING CAUSE

The following order was entered on the record in said cause No. 2179 in the Circuit Court of Coles County on July 22, 1940:

"By agreement of both parties, cause submitted to Victor Hemphill, one of the judges of the 7th Judicial Circuit of the State of Illinois. Cause submitted on record and oral statement and taken under advisement with privilege to parties to present additional argument either oral or written if desired by either party or by the Court. The above order entered on this docket by Judge Ben F. Anderson, as per request of Judge Hemphill.

ORDER OF CIRCUIT COURT APPROVING ORDER OF COMMISSION

The following order was entered on the record in said cause in the Circuit Court of Coles County on August 2, 1940:

"This day comes the parties in the above cause and the Court after due deliberation approves the order of the Illinois Commerce Commission entered November 30, 1939."

Praecipe for record filed September 6, 1940.

[fols. 24-76-25] NOTICE OF APPEAL TO SUPREME COURT OF ILLINOIS

Notice of Appeal to the Supreme Court of the State of Illinois from the Circuit Court of Coles County, filed September 6, 1940.

Glenn W. Clark, Esq., 10[illegible] West Eleventh St., Kansas City, Missouri. Brown, Hay and Stephens, 714 First Natl. Bank Bldg., Springfield, Illinois, *Attorneys for Appellant.*

[fol. 26] IN SUPREME COURT OF ILLINOIS

STATEMENT OF ERRORS RELIED UPON FOR REVERSAL—Filed November 9, 1940

1. The Illinois Commerce Commission was without jurisdiction to hear and determine the matter in controversy to enter its order dated November 30, 1939 in the proceeding

before it, because Appellant's operation and business are wholly interstate in character and as to matters in controversy in the proceeding before the Illinois Commerce Commission, the Appellant and the subject matter are under the exclusive jurisdiction of the Federal Power Commission under the Natural Gas Act 52 Stat. 820-33 (15 U. S. C. A. 717-717W).

2. The Illinois Commerce Commission Act of June 29, 1921 is invalid insofar as it may authorize the order of November 30, 1939, entered by the Illinois Commerce Commission, in that the order would interfere with and place a burden upon interstate commerce in contravention of Article I, Section 8, Clause 3, of the Constitution of the United States of America.

3. The Illinois Commerce Commission Act of June 29, 1921 is invalid insofar as it may authorize the order of the Illinois Commerce Commission of November 30, 1939, and said order is invalid in that said Act and order would take the property of Appellant without due process of law by requiring it to construct a pipeline into territory already being served by an interstate natural gas company, which Appellant cannot lawfully do without obtaining a certificate [fols. 27-29] of convenience and necessity from the Federal Power Commission under the provisions of the Natural Gas Act, and which if done without such authority, would cause Appellant to incur liability to heavy penalty under the Natural Gas Act and to a probable loss of its investments in the pipeline ordered to be constructed.

4. The conclusions of law of the Illinois Commerce Commission to the effect that Appellant's business and operations constitute intrastate commerce are not supported by and are contrary to the evidence.

5. The Circuit Court of Coles County erred in affirming the order of the Illinois Commerce Commission entered by said Commission on November 30, 1939.

[fol. 29-1] IN SUPREME COURT OF ILLINOIS

[Title omitted]

Additional Abstract of Record—Filed December 3, 1940

The abstract filed by Respondent-Appellant makes only brief reference to Petitioner's Exhibit A, the Order of the

Illinois Commerce Commission in Commission Docket No. 21882, in which the Commission refused to approve a contract entered into by Central Illinois Public Service Company, Petitioner-Appellee, with Indiana Consumers Gas and By-Products Company, a gas supply company of the State of Indiana, and ordered the first named Company [fol. 29-2] to take other steps to procure a source of supply of gas.

The abstract contains only excerpts from Respondent's Exhibit 1, the Contract entered into between the Illinois Natural Gas Company, Respondent-Appellant, and the Panhandle Eastern Pipe Line Company, for the approval of which by the Commission the Respondent-Appellant Company made application in Commission Docket No. 26563.

The abstract also contains only excerpts from Petitioner's Exhibit B, the Order of the Illinois Commerce Commission in Commission Docket No. 26563, in which the Commission approved the contract above referred to between Illinois Natural Gas Company, Respondent-Appellant, and the Panhandle Eastern Pipe Line Company.

Counsel for the Commission and Petitioner-Appellee believe that the full text of these Exhibits which were before the Commission and, as shown by the Order of the Commission here appealed from, were considered by it, should be before the Court in passing upon this case.

The Exhibits are accordingly here set forth in full.

[fol. 29-3] PETITIONER'S EXHIBIT "A"

"State of Illinois

Illinois Commerce Commission

21882

"CENTRAL ILLINOIS PUBLIC SERVICE COMPANY in the Matter of Application for Approval of Contract Entered Into by Applicant with the Indiana Consumers Gas & By-Products Company April 30, 1932, for Natural Gas to Be Furnished at Mattoon, Charleston, Paris and Effingham and Adjacent Municipalities

Order

"By the Commission:

"On June 30, 1932, the petitioner, Central Illinois Public Service Company, filed its petition in the above entitled

cause, and thereafter on October 24, 1933, amended the same, asking approval by the Commission of a proposed contract between the petitioner and the Indiana Consumers Gas & By-Products Company, a corporation organized and existing under the laws of Delaware and qualified to do business in the State of Indiana, hereinafter referred to as the "Indiana Consumers," under the terms of which said contract Indiana Consumers was to furnish to the petitioner at a point on the state line between the states of Illinois and Indiana natural gas required by petitioner in rendering a public utility gas service in the cities of Paris, Charleston, Mattoon and Effingham and certain other smaller intermediate communities in the State of Illinois. The cause was [fol. 29-4] first heard on July 19, 1932, and then continued from time to time for further hearing until June 10, 1936, when it was marked "Heard and Taken."

"From the evidence introduced at the hearing, it appears that the petitioner is a corporation organized and existing under the laws of the State of Illinois, owning and operating, with charter powers so to do, a gas transmission line extending from a point on the Illinois-Indiana state line to the city of Paris, thence to the city of Mattoon via the city of Charleston, and thence to the city of Effingham, passing through various smaller intermediate communities; that it also owns and operates in the above named cities and intermediate communities gas distribution systems and other gas equipment and apparatus; and that in the ownership and operation of all the aforesaid property the petitioner is a public utility subject to the jurisdiction of the Commission.

"The evidence further shows that the contract submitted for approval mentions a heating value content for the gas to be furnished of approximately 950 British thermal units per cubic foot, but expressly provides that Indiana Consumers may furnish, without penalty, natural gas of a heating value content of not less than 900 British thermal units per cubic foot.

"It further appears from the evidence that during the past three or four years natural gas has been furnished to the petitioner by the Indiana Consumers for the gas public utility service rendered by the petitioner in the above named [fol. 29-5] cities and in the intermediate communities above referred to, and that during said period the demand for gas public utility service has rapidly increased, and in the

future will continue to increase, due to an increased demand in said cities and communities for gas for space heating purposes.

"It further appears from the evidence that during the past heating season of 1935-1936 the supply of natural gas obtained by petitioner as above set forth was inadequate to meet the gas public utility needs of petitioner in said cities and communities, and that in view of the probable future increase in the demand for petitioner's gas public utility service in said cities and communities it will be necessary that provision be made by petitioner for obtaining an additional supply.

"It further appears from the evidence that under said proposed contract the price to be paid by petitioner for said natural gas is 37½¢ per thousand cubic feet, except for gas for certain industrial uses for which a lower rate is provided, but of which little, if any, is required by petitioner in said cities and communities.

"It further appears from the evidence that the Panhandle Illinois Pipe Line Company, a corporation organized and existing under the laws of the State of Illinois, owns and operates, as a public utility, gas transmission pipe lines for the supply of natural gas to gas distributing companies in Illinois, at wholesale, and as part of its equipment in so doing maintains and operates a large natural gas transmission main at a distance of only approximately [fol. 29 6] eighteen miles from the said city of Mattoon from which said company could be required as a public utility to furnish petitioner with an adequate supply of natural gas for petitioner's aforesaid public utility needs of a heating value of approximately 1000 British thermal units per cubic foot, and that such supply could be obtained by petitioner at a materially lower cost to petitioner than the gas of lower heating value to be supplied under the proposed contract.

"The Commission having considered the evidence and being fully advised in the premises, finds:

"(1) that the petitioner is a public utility subject to the jurisdiction of the Commission and that the proposed contract is one which should, and by its express terms is required to, be approved by the Commission in order to have legal effect, and that the Commission has full and complete jurisdiction over both the parties and the subject matter;

"(2) that the supply of gas received by the petitioner during the past heating season of 1935-1936 was inadequate to meet the gas public utility demands of the petitioner in the above named cities and above referred to communities;

"(3) that the demand for public utility natural gas service in the above named cities and above referred to communities is increasing and will continue to increase, particularly for space heating purposes;

"(4) that in order to render adequate gas public utility service in the aforesaid cities and in the communities above [fol. 29-7] referred to, petitioner should make more full and complete provisions whereby it will be assured of an adequate supply of gas at all times;

(5) that the proximity of the gas main of the Panhandle Illinois Pipe Line Company to the district served by petitioner and the assurance of an adequate supply of gas to be obtained therefrom offer a method by which petitioner can, either by way of dividing petitioner's requirements between two separate sources of supply or by obtaining petitioner's full requirements from a single ample source make ample provisions whereby petitioner's present and future increased demand for gas public utility service in the above mentioned cities and the communities above referred to will be fully met, and that this should be done;

(6) that in view of the aforesaid inadequate supply, the contract provisions for heating value and cost, the aforesaid contract should not be approved;

(7) that petitioner should, at such early date as will permit such installations, modifications or changes in its method of obtaining its natural gas requirements for its gas public utility service to be rendered in the above named cities and the communities above referred to during the coming heating season of 1936-1937, submit to this Commission such plan or method as will adequately care for petitioner's requirements therein.

"It is Therefore Ordered by the Commission that the proposed contract be, and the same is hereby, disapproved.

"It is Further Ordered that the petitioner submit to the [fol. 29-8] Commission such plan or method for obtaining a supply of natural gas in quantities ample to meet petitioner's reasonable future requirements in the above named

cities and in the communities above referred to, and that such plan or method be submitted by the petitioner at such early date as will enable petitioner to procure such reasonably ample supply for the coming heating season of 1936-1937.

"By order of the Commission at Chicago, Illinois, this 18th day of June, 1936.

(Signed) William W. Hart, Secretary." (Seal.)

RESPONDENT'S EXHIBIT 1

"Agreement made and entered into as of the 30th day of June, 1938, by and between Panhandle Eastern Pipe Line Company, a corporation of the State of Delaware (hereinafter called Eastern), party of the first part, and Illinois Natural Gas Company, a corporation of the State of Illinois (hereinafter called Illinois), Party of the Second Part.

"Eastern represents that it owns natural gas production facilities and gas purchase contracts in the States of Texas, Oklahoma and Kansas and a natural gas transmission pipe line extending from its production area to a point in Vermilion County, Indiana, adjacent to the Illinois-Indiana state line and that it will be able to have available at the several places of delivery hereinafter designated sufficient [fol. 29-9] quantities of natural gas to fulfill the requirements of this Agreement.

"Illinois represents that it owns certain gas transmission pipe lines extending from the pipe lines of Eastern in the State of Illinois to various cities and communities in said state, from which pipe lines it sells gas to consumers directly and at wholesale to various distributing companies in the State of Illinois, and also sells gas to certain rural customers adjacent to the main line of Eastern in said state.

"Eastern desires to sell to Illinois and Illinois desires to purchase from Eastern, a supply of natural gas to meet the present and future requirements of the present customers and communities aforesaid, as well as any additional customers and communities in the central Illinois area which might hereafter be served with natural gas by Illinois.

"Now, Therefore, in consideration of the mutual covenants and agreements of the parties hereto as herein set forth, the parties hereto covenant and agree as follows:

"Article I

Definitions

"Except where the context otherwise indicates another or different meaning or intent, the following terms are intended and used and shall be construed to have meanings as follows:

"1. The "Effective Date" of this Agreement shall mean the first day of March, 1938.

[fol. 29-10] "2. The term "day" wherever used in this Agreement, shall mean a period of twenty-four (24) consecutive hours beginning and ending at seven o'clock A. M. Standard Time.

"3. The term "month," wherever used in this Agreement, shall mean the period beginning at seven o'clock A. M. Standard Time on the 26th day of a calendar month and ending at seven o'clock A. M. Standard Time on the 26th day of the next succeeding calendar month.

"4. "Industrial Customer" shall mean an industrial customer of Illinois or of a distributing company supplied by Illinois, who purchases gas under a special contract or rate schedule providing for the curtailment, interruption or discontinuance of delivery in the event of an insufficiency in the supply of gas available for such delivery.

"5. The term "places of delivery" wherever used in this Agreement shall mean the points of connection of any present or future spur or lateral lines or farm taps of Illinois with the pipe line or lines of Eastern in the State of Illinois at which gas is delivered or deliverable to Illinois, or such other point or points as may be mutually agreed upon.

Article II

"Scope of Agreement

"1. Commencing with the effective date of this Agreement, and for the period provided in Article III hereof, Eastern agrees to sell and deliver to Illinois and Illinois agrees to buy and receive from Eastern, all of the natural [fol. 29-11] gas required by Illinois for resale by Illinois to its present and future direct customers including farm tap customers along its own lines and along the lines of Eastern in the State of Illinois and to the several distribut-

ing companies now served or hereafter to be served by Illinois in the central Illinois territory covered by certificates of convenience and necessity heretofore granted to Illinois, or its predecessor, or which might hereafter be applied for by and granted to Illinois in the general territory now being served by it with natural gas to enable it and the said distributing companies to serve any and all present and future customers in the communities now or hereafter served.

"2. In the event that Illinois shall desire to purchase natural gas for ultimate resale to any present or prospective Industrial Customer, Eastern agrees that it will supply such gas to Illinois subject to its having available, in its sole judgment and discretion and in view of its then existing commitments, a sufficient supply of natural gas at the place or places of delivery for such purpose; Provided, that deliveries of gas for ultimate resale to Industrial Customers shall always be subject to temporary curtailment, interruption or discontinuance in the event of temporary shortage from any cause whatsoever, it being the intention hereof that domestic and commercial customers shall always take precedence over Industrial Customers in event of any shortage in the supply of gas.

[fol. 29-12] Article III

"Term of Agreement

"The term of this Agreement shall be for a period of five (5) years beginning with the Effective Date hereof, and thereafter until cancelled by either party upon giving to the other twelve (12) months' notice in writing; Provided, that if so cancelled before the expiration of twenty (20) years following the Effective Date hereof and if at the time of such cancellation either or both of the parties hereto are subject to regulation by a duly constituted regulatory body or bodies, then such cancellation shall not become effective unless and until approved by a duly constituted regulatory body having jurisdiction over either or both of the parties hereto.

Article IV

"Quality

"1. Eastern agrees that the gas delivered hereunder shall be natural gas except (a) that said natural gas shall at

all times comply with the requirements as to purity expressed in this Agreement; (b) that Eastern may extract or permit the extraction of moisture, helium, natural gasoline, butane, propane and/or other hydro-carbons (excepting methane) from said natural gas, or may increase or reduce the heat content of said natural gas before delivery thereof to Illinois; and (c) that Eastern may subject or permit the subjection of the gas to compression, cooling, cleaning and other processes to such an extent as may be [fol. 29-13] required in its transmission from the wells to the point or points of delivery.

"The gas delivered hereunder is assumed but not guaranteed to have a gross heating value of 1,000 British thermal units per cubic foot when saturated with water vapor at a temperature of 60° F. and at a pressure of 30 inches of mercury. In no event shall the gross heating value of the gas delivered hereunder fall below 950 British thermal units per cubic foot, nor exceed 1,050 British thermal units per cubic foot.

"2. Eastern agrees that the gas delivered hereunder

"(a) shall be commercially free from solid and/or liquid matter, dust, gums and/or gum forming constituents;

"(b) shall not contain more than one (1) grain of hydrogen sulphide per one hundred (100) cubic feet and that this purity requirement shall be determined by quantitative test after presence of H2S has been indicated by qualitative test which shall consist of exposing a strip of white filter paper recently moistened with a solution of one hundred (100) grains of lead acetate in one hundred (100) cubic centimeters of water, to be exposed to the gas for one and one-half minutes in an apparatus previously purged, through which the gas is flowing at the rate of approximately five cubic feet per hour, the gas not impinging from a jet upon the test paper, and which qualitative test shall be deemed to be satisfied if after this exposure the test paper is found not distinctly darker than a second paper freshly moistened with a solution not exposed to the gas;

[fol. 29-14] "(c) shall not contain more than twenty (20) grains of total sulphur per hundred (100) cubic feet;

"(d) shall not contain an amount of moisture at any time exceeding that corresponding to saturation at the tempera-

ture and pressure of the gas in the main pipe line at a point approximately fifty (50) feet in advance of Eastern's meter inlet header, and that the water shall not be present in liquid phase.

Article V

"Measurements

"1. Measurements of volume and heat value of gas delivered by Eastern to Illinois hereunder shall be at the following points:

"Volume

"(a) The volume of gas so delivered shall be measured at the meter or meters of Eastern, which, together with any building and with all other collateral equipment required for the final determination of volume, Eastern agrees to install, maintain and operate at the several places of delivery, except that in instances where deliveries to customers of Illinois are made at Eastern's main line, such meters shall be installed, maintained and operated by Illinois, and except that when practicable the parties hereto may by mutual agreement establish other or different points of measurement than those herein specified.

"Heat Value

"(b) The heat value of gas delivered by Eastern hereunder shall be determined by a calorimeter or calorimeters of Eastern, which Eastern agrees to install, maintain and [fol. 29-15] operate at its Glenarm Compressor Station, or at such other place as may be agreed on between the parties.

"2. The measurement of volume of gas delivered by Eastern to Illinois hereunder shall be made in the following manner:

"Volume

"(a) The unit of volume for the purpose of measurement shall be one cubic foot of natural gas at a pressure of fourteen and nine-tenths (14.9) pounds per square inch absolute and at a temperature of sixty (60) degrees Fahrenheit. The average absolute (barometric) pressure shall be assumed to be fourteen and four-tenths (14.4) pounds to the square inch, irrespective of the actual elevation or location of the point of delivery above sea level or of varia-

tions in such barometric pressure from time to time. For meters of the orifice type, the following factors shall be given due consideration, viz.:

"(i) For each delivery point at which the average daily delivery over an annual period shall exceed 150,000 cubic feet, the temperature of the natural gas flowing through the meter shall be obtained by the use of a recording thermometer so installed by Eastern that it may properly record the temperature of the natural gas flowing through the meter. The arithmetic average of the temperature recorded in each twenty-four hour day shall be used in computing measurements. For each delivery point, at which the average daily delivery over an annual period shall not exceed [fol. 29-16] 150,000 cubic feet, Eastern shall not be required to install a recording thermometer, and where such installation is not provided, the temperature of the gas for the purpose of measurement shall be assumed to be sixty (60) degrees Fahrenheit.

"(ii) The specific gravity of the gas shall be determined monthly by a joint test as near the first of the month as practicable or as much oftener by a joint test as is found necessary in practice. The method of test shall be by Edwards Balance or by such other method as shall be agreed upon by the parties. The regular test at the first of the month shall determine the specific gravity to be used in computations for the measurements of gas deliveries until the end of such month or until changed by subsequent tests; any special test to be applicable from the day made until changed by subsequent test. It is provided, however, that by agreement between the parties a suitable continuous method may be adopted.

"Heat Value

"The gross heating value of the gas per cubic foot, as defined in Section 2 above, shall be determined by taking the arithmetic average of the daily record of a recording calorimeter of a type to be mutually agreed upon, such recording calorimeter to be checked twice each month, or at such other intervals as the parties may agree upon, by comparison with a manually operated calorimeter of a type approved by [fol. 29-17] the U. S. Bureau of Standards and operated in accordance with methods recommended by said Bureau.

Article VI

"Metering Equipment

"1. Each party shall have the right to be present, at its election, at the time of any installing, reading, cleaning, changing, repairing, inspecting or adjusting done in connection with the other party's measuring equipment used in measuring deliveries hereunder, and to customers of Illinois, and each party shall advise the other party of any intended major maintenance operation sufficiently in advance in order that the other party may conveniently have its representative present. The records from such measuring equipment shall remain the property of the party owning the meter, but, upon the request of either party, the party owning the meter will submit to the other party such records and charts, together with calculations therefrom for the other party's inspection and verification, subject to return within ten (10) days after receipt thereof.

"2. The installation, maintenance and operation of regulating equipment shall be such as not to affect the accuracy of the gas volume determination made from meters. The meter or meters shall be so located or protected as to assure freedom from pulsations, vibrations, or surges at the meter or meters from any cause insofar as such protection is obtainable within practicable limits mutually agreed [fol 29-18] upon to embody the best knowledge and information available.

"3. Either party may install, maintain and operate such check measuring equipment as it shall desire, provided that such check meters and equipment shall be so installed as not to interfere with the operation of meters of the other party. Either party shall have access to such check measuring equipment at all reasonable hours, but the reading, calibrating and adjusting thereof and the changing of charts shall be done only by employees or agents of the party owning the same. Each party shall have the right to be present, at its election, at the time of any installing, reading, cleaning, repairing, inspecting, calibrating or adjusting done in connection with such check measuring equipment. Charts and records from said check measuring equipment installed by either party, together with calculations therefrom, shall be available to the other party for inspection and verifica-

tion, subject to return within ten (10) days after receipt thereof.

"4. All installations of measuring equipment applying to or affecting deliveries hereunder shall be made in such manner as to permit of accurate determination of the quantity of gas to be delivered and ready verification of the accuracy of measurement.

"5. If for any reason meters are out of service and/or out of repair so that the quantity of gas delivered is not correctly indicated by the reading thereof, the gas delivered through the period such meters are out of service [fol. 29-19] and/or out of repair shall be estimated and agreed upon by the parties hereto upon the basis of the best data available, using the first of the following methods which is feasible:

"(a) By using the registration of any check meter or meters if installed and accurately registering;

"(b) By correcting the error if the precentage of error is ascertainable by calibration, test or mathematical calculation; or

"(c) By estimating the quantity of delivery by deliveries during preceding periods under similar conditions when the meter was registering accurately.

"6. From time to time and at least once each month, the accuracy of all measuring equipment at the places of delivery except meters used for deliveries to farm tap customers, shall be verified, at the expense of the party owning the same in the presence of representatives of Eastern and Illinois, and the parties shall jointly observe any adjustments which are made in such measuring equipment. If at any time either party shall notify the other party that it desires a special test of any meter, the parties hereto shall cooperate to secure an immediate verification of the accuracy of the measuring equipment and joint observation of any adjustments. Each party shall give to the other party notice of the time of all tests of meters sufficiently in advance of the holding of the tests in order that the other party may conveniently have its representative present.

[fol. 29-20] "7. If upon any test any meter is found to be not more than two per cent (2%) fast or slow, previous readings of such meters shall be considered correct in com-

puting the volume of gas delivered by Eastern to Illinois; but the meter shall at once be properly adjusted to record accurately. If upon any test any meter shall be found to be inaccurate by an amount exceeding two per cent (2%), then any previous readings of such meter shall be corrected to zero error for any period which is definitely known and/or agreed upon, but in case the period is not definitely known and/or agreed upon, such correction shall be for a period extending over one-half of the time elapsed since the date of last calibration, not exceeding a correction period of sixteen (16) days. If any test of any measuring equipment of either party shall be made at the request of the other party, with the result that such measuring equipment shall be found to register accurately or within two per cent (2%) of accuracy, the party requesting such test shall bear the expense thereof. The expense of all other tests shall be borne by the owner of such measuring equipment.

"8. The meters at the places of delivery where daily readings are practicable shall be read at seven o'clock Standard Time in the morning of each day of each calendar month, or as near to that time as practical operating conditions will permit.

"9. Each party hereto shall preserve for a period of at least five (5) years all test data, charts and other records resulting from performance by it of the terms of this Agreement.

[fol. 29-21] Article VII

"Rate

"Illinois shall pay Eastern for all gas sold and delivered by Eastern to Illinois hereunder, fair and reasonable prices to be determined from time to time, which prices shall give due consideration, among other pertinent factors, to the demand of Illinois upon the pipe line transmission facilities of Eastern and the respective investments of the parties hereto in property used and useful in delivering gas from Eastern's producing areas to Illinois customers.

Article VIII

"Billing

"1. Illinois shall, on or before the 8th day of each calendar month, furnish to Eastern a detailed statement showing the

volume and the billing price of all gas delivered to its customers during the preceding billing month.

"2. Eastern shall, on or before the 12th day of each calendar month, render to Illinois a statement showing the following:

"(a) The total volume of gas delivered hereunder by Eastern to Illinois during the preceding billing month; with complete computation showing procedure by which determined;

"(b) The payment then due from Illinois to Eastern for gas delivered during the preceding billing month.

"3. Each party shall have the right to examine at reasonable times the books, records and charts of the other party [fol. 29-22] to the extent necessary to verify the accuracy of any statement, charge or computation made under or pursuant to any of the provisions of this Agreement.

Article IX

"Payments

"1. Illinois agrees to pay to Eastern at its designated office on or before the 25th day of each calendar month for the natural gas delivered by Eastern to Illinois hereunder during the preceding billing month, according to the measurements, computations and prices herein provided and billed by Eastern in the statement for said month.

"2. If it shall be found at any time that an error has been made in the amount billed in any statement rendered by Eastern against Illinois hereunder, such error shall be adjusted and payment made, but without interest, within thirty (30) days of the determination thereof, provided that claim therefor shall have been made within sixty (60) days from the date of discovery of any such error, but in any event within twelve (12) months from the date of such statement.

Article X

"Operations By Eastern And Illinois

"1. Eastern agrees from time to time to make such alterations in its pipe line system as may be necessary to insure

its adequate capacity for the delivery of gas to Illinois in accordance with the requirements of this Agreement, and to maintain, directly or through subsidiaries or through [fol. 29-23] gas purchase contracts, a sufficient supply of natural gas to supply the requirements of Illinois under this Agreement.

"2. Illinois agrees that it will at all times exercise its best efforts to retain as customers the distributing companies now served and will not voluntarily terminate, except for cause or intentionally commit any act or do anything which would entitle any of said distributing companies to terminate or discontinue the purchase of natural gas from Illinois. Illinois agrees, from time to time, to make such alterations in or additions to its pipe line system as may be necessary to insure its adequate capacity for the transmission and delivery of gas to said several distributing companies.

"3. Illinois agrees to operate, keep in repair and maintain its pipe lines and facilities in such manner as to assure a minimum amount of loss by reason of inaccuracy of sales meters, leakage, or other transmission loss. In event inaccuracies in sales meters, leakage or other transmission loss suffered in the system of Illinois in any month shall exceed the rate of loss suffered in Eastern's transmission system, then, unless Illinois upon notice from Eastern, takes prompt action to reduce the rate of loss to a basis comparable to Eastern's experience on its system, said Eastern shall have the right to enter upon the properties of Illinois and make such repairs and perform such maintenance work as it may reasonably deem necessary to accomplish such reduction. In such event Illinois shall promptly reimburse [fol. 29-24] Eastern for all reasonable cost and expense, incurred by it in so doing.

"4. Eastern agrees to operate its pipe line in such manner as to assure, as nearly as is reasonably possible, continuous supply to Illinois of gas in the quantity and of the quality required by this Agreement.

Article XI

"Places and Points of Delivery

"The places of delivery for all gas to be delivered by Eastern to Illinois hereunder shall be at the points of con-

nection between the facilities of the parties hereto in the State of Illinois.

Article XII

"Possession of Gas

"1. As between the parties hereto, Eastern shall be in control and possession of the gas deliverable hereunder and responsible for any damage or injury caused thereby until the same shall have been delivered to Illinois at the points of delivery, after which Illinois shall be deemed to be in exclusive control and possession thereof and responsible for any injury or damage caused thereby.

"2. Each party shall indemnify and save harmless the other party on account of any and all damages, claims or actions arising out of the maintenance or operation of the property and/or equipment of the indemnifying party, the points of delivery of the gas as hereinbefore specified to [fol. 29-25] be the point of division of responsibility between the parties.

Article XIII

"Pressure

"Eastern agrees to deliver or cause to be delivered gas hereunder at such pressures as Illinois may require to furnish adequate service to its customers, up to but not exceeding two hundred pounds to the square inch gauge pressure, at the points of delivery. Eastern agrees that it will use due care and diligence to furnish gas to Illinois at a uniform pressure.

Article XIV

"Warranty of Title to Gas

"Eastern agrees that it will and hereby does warrant generally the title to all gas delivered under this Agreement and the right to sell the same and that such gas shall be free and clear from all liens and adverse claims and that it will indemnify Illinois and save it harmless from all suits, actions, debts, accounts, damages, costs, losses and expenses arising from or out of adverse claims of any or all persons to said gas and/or to royalties, taxes, license fees or charges thereon, which are applicable before the possession of the

gas passes to Illinois or which may be levied and assessed upon the delivery thereof to Illinois. In the event any adverse claim of any character whatsoever is asserted in respect of any of said gas, Illinois may withhold payments under this Agreement up to the amount of such claim without interest until such claim has been finally determined, as [fol. 29-26] security for the performance of Eastern's obligations with respect to such claim under this Section, or until Eastern shall have furnished bond to Illinois, in an amount and with sureties satisfactory to Illinois, conditioned for the protection of Illinois with respect to such claim.

Article XV

"Force Majeure

"1. Neither party shall be liable in damages to the other for any act, omission or circumstance occasioned by or in consequence of any acts of God, strikes, lockouts, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrests and restraints of rulers and peoples, civil disturbances, explosions, breakage or accident to machinery or lines of pipe, temporary failure of gas supply, the binding order of any court or governmental authority which has been resisted in good faith by all reasonable legal means, and any other cause, whether of the kind herein enumerated, or otherwise, not within the control of the party claiming suspension and which by the exercise of due diligence such party is unable to prevent or overcome.

"2. Such causes or contingencies affecting the performance of this Agreement by either party, however, shall not relieve it of liability in the event of its concurring negligence or in the event of its failure to use due diligence to remedy the situation and remove the cause in an adequate manner and with all reasonable dispatch, nor shall such causes or [fol. 29-27] contingencies affecting the performance of this Agreement relieve either party from its obligations to make payments of amounts then due hereunder; nor shall such causes or contingencies relieve either party of liability unless such party shall give notice and full particulars of the same in writing or by telegraph to the other party as soon as possible after the occurrence relied on.

Article XVI

"Miscellaneous

"1. This Agreement is subject to present and future valid statutes and orders, rules and regulations of duly constituted authorities having jurisdiction over either or both of the parties hereto.

"2. There shall be no modification of the terms and provisions hereof, except by the execution of supplementary written contracts.

"3. No waiver by either party of any one or more defaults by the other in the performance of any provisions of this Agreement shall operate or be construed as a waiver of any future default or defaults, whether of a like or of a different character.

"4. Any company which shall succeed by purchase, merger or consolidation to the properties, substantially as an entirety, of Eastern or Illinois, as the case may be, shall be entitled to the rights and shall be subject to the obligations of its predecessor in title under this Agreement; but other- [fol. 29-28] wise neither party shall assign this Agreement or any of its rights hereunder, unl ss it shall first have obtained the consent thereto of the other party.

"5. This Agreement supersedes and cancels all previous contracts, agreements and understandings between the parties hereto or their predecessors covering the sale and delivery of gas by Eastern to Illinois, or to the predecessor of Illinois.

"In Witness Whereof, the parties hereto have caused this Agreement to be signed by their respective Presidents or Vice-Presidents thereunto duly authorized, and their respective corporate seals to be hereto affixed and attested by their respective Secretaries or Assistant Secretaries, the day and year first above written."

PETITIONER'S EXHIBIT "B"

"State of Illinois

Illinois Commerce Commission

26563

"In the matter of the joint application of Panhandle Illinois Pipe Line Company and Illinois Natural Gas Company for an order consenting and approving the transfer, assignment and conveyance by Panhandle Illinois Pipe Line Company of all of its properties and assets to Illinois Natural Gas Company and Panhandle Eastern Pipe Line Company.

"ORDER

"By the Commission:

"On February 23, 1938 Panhandle Illinois Pipe Line Company and Illinois Natural Gas Company, petitioners herein, [fol. 29-29] filed with the Commission their joint sworn application in the above entitled matter, requesting the approval of a contract (copy of which is attached to said joint application as Exhibit "1") providing for the transfer, assignment and conveyance by Panhandle Illinois Pipe Line Company of all of its property and assets to Illinois Natural Gas Company and Panhandle Eastern Pipe Line Company for the consideration and upon the terms, provisions and conditions set forth in said contract, and for permission and authority to carry out the terms, provisions and conditions thereof.

"Said joint application was duly set for hearing by the Commission on February 23, 1938 and on said date said matter was heard by a duly authorized examiner of the Commission, and evidence, both oral and documentary, was introduced by petitioners in support of said application.

"From the sworn joint application filed herein and the evidence offered by petitioners at the hearing herein, it appears that Panhandle Illinois Pipe Line Company is a corporation duly organized and existing under and by virtue of the laws of the State of Illinois, and is a public utility operating as such in said state, and carries on a gas public utility business within the State of Illinois under certificates of convenience and necessity heretofore granted to it or its predecessor by this Commission; that its principal office and

place of business within the State of Illinois is located at Glenarm, Sangamon County, Illinois; that said Panhandle Illinois Pipe Line Company has heretofore issued and has [fol. 29-30] outstanding 42,980 shares of its common capital stock of the par value of $100.00 per share, and has also heretofore issued its promissory notes in the aggregate principal amount of $5,000,000; that all of its said capital stock and promissory notes are owned by Panhandle Eastern Pipe Line Company, a Delaware corporation.

"It further appears that Illinois Natural Gas Company is a corporation duly organized and existing under and by virtue of the laws of the State of Illinois, with its principal office within the State of Illinois, located at Glenarm, Sangamon County, Illinois; that under its articles of incorporation, copy of which was introduced in evidence, it has an authorized capital stock of 28,000 shares of no par value, none of which has heretofore been issued or is outstanding; that said Illinois Natural Gas Company has charter powers to operate as a public utility and has authority under its articles of incorporation, among other things, to conduct a general gas public utility and pipe line business within the State of Illinois.

"It further appears that Panhandle Illinois Pipe Line Company now owns and operates a system of gas pipe lines, compressor stations, meter and regulator stations and appurtenances and facilities used in connection with the operation thereof within the State of Illinois; that said petitioner is now engaged in the business of purchasing, transporting, selling and furnishing natural gas to public utilities within the State of Illinois and to other consumers of natural gas [fol. 29-31] within said state, and is also engaged in the business of transporting natural gas across the State of Illinois, said gas entering the State of Illinois at the Missouri-Illinois State line and leaving the state at the Illinois-Indiana State line; that all of the gas transported, sold and delivered by said petitioner within the State of Illinois and all of the gas transported by it across the State of Illinois is purchased and received by said petitioner from Panhandle Eastern Pipe Line Company, its parent corporation.

"It further appears from the joint application and from the evidence introduced at the hearing herein; that the property and facilities owned by Panhandle Illinois Pipe Line Company consist of;

"(First) A system of lateral pipe lines, meter stations, regulator stations and other appurtenances and facilities used exclusively in the transportation, delivery and sale of natural gas to customers within the State of Illinois; that said lateral pipe lines, meter stations, regulator stations and other appurtenances and facilities used in connection therewith are properly used, useful or necessary to said petitioner in the conduct and discharge of its duties and functions as a public utility in the State of Illinois; that said property, appurtenances and equipment are specifically described in a schedule entitled "Schedule of Properties and Assets of Panhandle Illinois Pipe Line Company to be Transferred, Assigned and Conveyed to Illinois Natural Gas Company," attached hereto, marked Exhibit [fol. 29-32] "A" and made a part hereof, to the same extent, purpose and effect as if written at length herein; and

"(Second) A combination main transmission pipe line of 22" and 20" diameter pipe, extending from a point near Pleasant Hill, in Pike County, Illinois, in an easterly direction to a point approximately four miles west of the Indiana-Illinois state line in Edgar County, Illinois; a pipe line 22" in diameter paralleling the aforesaid line, extending from a point near Pleasant Hill, in Pike County, Illinois, in an easterly direction a distance of approximately nineteen miles; a gas compressor station and the land upon which it has been constructed and is being operated and maintained, located near Glenarm, Sangamon County, Illinois, and a gas compressor station, together with the land upon which it has been constructed and is being operated and maintained, at a location near Tuscola, Douglas County, Illinois, together with the rights of way, easements, grants and permits over and across lands and other property upon which said pipe line and compressor stations have been constructed and are being operated and maintained, together with certain other appurtenances and facilities used in connection with the operation and maintenance of said main pipe line; that said main pipe line, compressor stations, appurtenances and facilities are being used by petitioner, Panhandle Illinois Pipe Line Company in connection with the transportation of natural gas as aforesaid across the state, and also in connection with the furnishing of natural gas to public utilities within the State of Illinois, [fol. 29-33] and to other consumers of natural gas within

said state; that a detailed description of said main pipe lines, compressor stations, appurtenances and facilities is contained in a schedule entitled "Schedule of Properties and Assets of Panhandle Illinois Pipe Line Company to be Transferred, Assigned and Conveyed in Liquidation to Panhandle Eastern Pipe Line Company," attached hereto, marked Exhibit "B" and made a part hereof, to the same extent, purpose and effect as if written at length herein.

"It further appears from the joint application herein and from the evidence that on the 18th day of February, 1938 a contract was made and entered into between petitioner, Panhandle Illinois Pipe Line Company, petitioner, Illinois Natural Gas Company, and Panhandle Eastern Pipe Line Company (which contract is expressly made subject to the approval of this Commission), under the terms of which petitioner, Panhandle Illinois Pipe Line Company contracted and agreed to transfer, assign and convey to Illinois Natural Gas Company its lateral pipe lines, meter and regulator stations, the rights of way, grants, easements, licenses and permits under which said lateral lines and properties were constructed and are being operated and maintained and all of the certificates of convenience and necessity heretofore granted by this Commission to said Panhandle Illinois Pipe Line Company, or its predecessor, for the construction and operation thereof, and for the sale and delivery of natural gas to customers within the State of Illinois; that a [fol. 29-34] full and complete description of the property and assets which said Panhandle Illinois Pipe Line Company has so agreed to transfer, assign and convey to Illinois Natural Gas Company is contained in the schedule hereinabove referred to, marked Exhibit "A", attached hereto and made a part hereof; that under the terms of said contract Illinois Natural Gas Company, one of the petitioners herein contracted and agreed that in consideration of the transfer, assignment and conveyance of said property and assets to it by said Panhandle Illinois Pipe Line Company to issue to said Panhandle Illinois Pipe Line Company all of Illinois Natural Gas Company's authorized capital stock consisting of 28,000 shares of no par value; that under the terms of said contract it is further provided that simultaneously with the transfer, assignment and conveyance of the aforesaid property to Illinois Natural Gas Company, petitioner, Panhandle Illinois Pipe Line Company will trans-

fer, assign and convey in liquidation to Panhandle Eastern Pipe Line Company, a Delaware corporation, all of the remainder of its properties and assets of every kind and description, of whatsoever character and wheresoever situated, which said properties so to be transferred to Panhandle Eastern Pipe Line Company are specifically described in the schedule hereinabove referred to, marked Exhibit "B," attached hereto and made a part hereof; that under the terms of said contract and in consideration of the transfer, assignment and conveyance to it of such properties and assets of Panhandle Illinois Pipe Line Com- [fol. 29-35] pany, said Panhandle Eastern Pipe Line Company agrees to surrender to Panhandle Illinois Pipe Line Company for cancellation and redemption all of Panhandle Illinois Pipe Line Company's outstanding capital stock and debt consisting of 42,980 shares of capital stock of the par value of $100.00 per share and $5,000,000 aggregate principal amount of promissory notes heretofore issued to said Panhandle Eastern Pipe Line Company, and said Panhandle Eastern Pipe Line Company further agrees, under said contract, to assume all of the remainder of the debts, obligations and liabilities of Panhandle Illinois Pipe Line Company; that the respective boards of directors of said Panhandle Illinois Pipe Line Company, Illinois Natural Gas Company and Panhandle Eastern Pipe Line Company have adopted resolutions approving said contract and have authorized the officers of said respective companies to execute the same and do any and all things necessary to carry out the terms and provisions thereof.

"It further appears that under the terms of said contract, Illinois Natural Gas Company, upon acquisition of the properties and assets of Panhandle Illinois Pipe Line Company, described in the schedule hereinabove referred to, marked Exhibit "A" and attached hereto, proposes to own and operate the same in the conduct of a general gas public utility business within the State of Illinois under the jurisdiction of this Commission; that it proposes to and will carry on the gas public utility business now being carried on by Panhandle Illinois Pipe Line Company with [fol. 29-36] respect to rendering of gas service directly to consumers or furnishing gas to other public utilities within the State of Illinois, in substantially the same manner as said business is now being conducted and carried on by

said Panhandle Illinois Pipe Line Company; that it proposes to and represents that it will file with this Commission rate schedules, rules, regulations and conditions of service under which its said gas public utility business will be carried on and conducted substantially identical with the rate schedules, rules, regulations and conditions of service now on file with this Commission, and under which the gas public utility business of Panhandle Illinois Pipe Line Company, with respect to Illinois consumers, and with respect to furnishing of gas for resale to Illinois public utilities, is now being carried on and conducted.

"It further appears that upon consummation of the transfer, assignment and conveyance of all of the property and assets of Panhandle Illinois Pipe Line Company under the terms and provisions of said contract, Illinois Natural Gas Company proposes to enter into a contract with its then parent corporation, Panhandle Eastern Pipe Line Company, for a supply of natural gas of adequate quantities and of proper heating value and purity to enable it to properly carry out its duties and obligations as a gas public utility within the State of Illinois; that under the terms of said proposed contract delivery of natural gas to said Illinois Natural Gas Company will be made at the points of connection of any present or future spur or [fol. 29-37] lateral lines or farm taps of Illinois Natural Gas Company with the pipe line or lines of Panhandle Eastern Pipe Line Company.

"It further appears that since Illinois Natural Gas Company will be able to obtain delivery of natural gas at the said points of connection between its lines and those of Panhandle Eastern Pipe Line Company the ownership of the main pipe line, compressor station and other properties described in the schedule hereinabove referred to as Exhibit "B" and agreed to be transferred and conveyed to Panhandle Eastern Pipe Line Company will not be necessary to the said Illinois Natural Gas Company in the conduct of a gas public utility business in Illinois; that a copy of the gas contract so proposed to be entered into by said Illinois Natural Gas Company with said Panhandle Eastern Pipe Line Company is attached to the joint application herein, marked Exhibit "8" and made a part thereof, reference to which is hereby made. It further appears that it is intended that upon consummation of the several transactions pro-

vided for in the aforesaid contract, Panhandle Illinois Pipe Line Company will cease to operate as a public utility within the State of Illinois, and that appropriate steps will be taken in due course to effect a dissolution of said company.

"It further appears that upon consummation of all of the transactions contemplated under the terms of said contract, all of the property and assets now owned by Pan- [fol. 29-38] handle Illinois Pipe Line Company and used, useful or necessary exclusively in the furnishing of gas to consumers and to other public utilities within the State of Illinois and not used in the transportation of gas across and to points beyond this state, will be owned and operated by Illinois Natural Gas Company; that the value of the physical properties to be transferred to Illinois Natural Gas Company, as the same is now carried on the books of Panhandle Illinois Pipe Line Company, is approximately $2,695,000; that there is also to be transferred to Illinois Natural Gas Company current assets of $25,000 in cash and certain accounts receivable, which have been estimated to approximate the sum of $170,000; that the total book value of all property and assets thus to be transferred to Illinois Natural Gas Company will approximate $2,890,000; that there is now carried on the books of Panhandle Illinois Pipe Line Company a certain reserve for retirements and renewals; that the portion of such reserve for retirements and renewals applicable to the physical properties to be transferred to Illinois Natural Gas Company in the amount of $224,000 will likewise be transferred to the books of Illinois Natural Gas Company; that in addition thereto Illinois Natural Gas Company proposes to assume liability for accrued advalorem taxes on the properties thus being transferred to it, amounting to approximately $14,000. From the foregoing, which is shown by the joint application herein, and from the testimony offered at the hearing hereof, it appears that upon consummation of said several transac- [fol. 29-39] tions, all of the investment of Illinois Natural Gas Company will be represented by an issue of capital stock in the amount of 28,000 shares of no par value and that said company will upon acquisition of said property and assets and upon commencement of business have no underlying or outstanding bonds, promissory notes or debts of any kind or character.

"It further appears that the ownership by Illinois Natural Gas Company of the property proposed to be trans-

ferred, assigned and conveyed to it under said contract, free of any underlying debt, and with sufficient cash working capital, which will be provided to said Illinois Natural Gas Company under the terms of the aforesaid contract, together with the right to obtain a supply of natural gas, and other rights under aforesaid contracts, will enable said Illinois Natural Gas Company to perform its duties as a public utility in serving natural gas to the public directly and indirectly within the State of Illinois. It further appears that it will be to the benefit of said companies, and the interests of the public will be convenienced if the transfer, assignment and conveyance of the properties of Panhandle Illinois Pipe Line Company, is carried out in the manner and in accordance with the terms and provisions of said contract. It further appears that after the several transactions contemplated under the terms of the aforesaid contract have been carried out, the public utility business now being carried on and conducted by Panhandle Illinois Pipe Line Company within the State of Illinois will be car- [fol. 29-40] ried on and conducted by Illinois Natural Gas Company.

"The Commission having duly considered the joint sworn application filed herein, and the evidence, both oral and documentary, submitted in support thereof, and the representations and statements of counsel representing the joint petitioners herein, and being fully advised in the premises, is of the opinion and finds:

"(1) that the Commission has jurisdiction of the subject matter, of the joint application and of the joint petitioners herein;

"(2) that Panhandle Illinois Pipe Line Company, one of the petitioners in this cause, is a corporation duly organized and existing under and by virtue of the laws of the State of Illinois, with an outstanding capital stock of 42,980 shares of the par value of $100.00 per share, and outstanding promissory notes aggregating $5,000,000; that said petitioner is a public utility operating as such within the State of Illinois under the jurisdiction of this Commission; that all of said capital stock and debt is owned by Panhandle Eastern Pipe Line Company, a Delaware corporation;

"(3) that petitioner, Illinois Natural Gas Company, is a corporation duly organized and existing under the laws of

the State of Illinois, with an authorized capital stock of 28,000 sh .es of no par value, none of which has been issued; that said petitioner is authorized by its articles of incorporation to engage in business in the State of Illinois as a public utility, and is authorized to construct, own, operate and maintain a system of gas pipe lines and mains, [fol. 29-41] appurtenances and facilities for the transportation, delivery, distribution and sale of natural gas, and to render a general gas public utility business in the State of Illinois;

"(4) that Panhandle Eastern Pipe Line Company is a c poration duly organized and existing under and by virtue of the laws of the State of Delaware, and is duly authorized to transact business in the State of Illinois as a foreign corporation;

"(5) that Panhandle Illinois Pipe Line Company now owns and operates a system of main pipe lines, lateral pipe lines, compressor stations, meters, meter stations, regulator stations, fee lands, certificates of convenience and necessity, rights of way, easements, grants, licenses and permits, and other appurtenances, equipment and facilities used in carrying on its business in the State of Illinois, and in the transportation of natural gas across the State of Illinois; that the said gas so transported across the State enters Illinois at the Missouri-Illinois state line and leaves Illinois at the Illinois-Indiana state line; that the property and assets of Panhandle Illinois Pipe Line Company used, useful and necessary exclusively in the conduct of a general gas public utility business in the State of Illinois are described in a schedule entitled "Schedule of Properties and Assets of Panhandle Illinois Pipe Line Company to be Transferred, Assigned and Conveyed to Illinois Natural Gas Company," attached hereto, marked Exhibit "A" and made a part of this order; that a description of the property and assets owned by said Panhandle Illinois Pipe Line Company used in the transportation of natural gas into, across and to points beyond the state of Illinois, as [fol. 29-42] well as in the delivery of gas within the State of Illinois, is contained in a schedule entitled "Schedule of Properties and Assets of Panhandle Illinois Pipe Line Company to be Transferred, Assigned and Conveyed in Liquidation to Panhandle Eastern Pipe Line Company,"

attached hereto, marked Exhibit "B" and made a part of this order;

"(6) that on the 18th day of February, 1938, a contract was made and entered into between Panhandle Illinois Pipe Line Company, Illinois Natural Gas Company and Panhandle Eastern Pipe Line Company, a copy of which is attached to the joint application herein, marked Exhibit "1" and made a part thereof (which said contract is expressly made subject to approval by this Commission), under the terms of which Panhandle Illinois Pipe Line Company has agreed to transfer, assign and convey to Illinois Natural Gas Company, an Illinois corporation, the properties and assets owned by it, used, useful and necessary exclusively in the conduct of a general gas public utility business in Illinois, a description of which property and assets is contained in the schedule hereinabove referred to, marked Exhibit "A" and attached to this order; that under said contract Illinois Natural Gas Company agreed to issue to Panhandle Illinois Pipe Line Company all of its authorized capital stock consisting of 28,000 shares of no par value; that under the terms of said contract Panhandle Illinois Pipe Line Company further agreed that simultaneously with the transfer, assignment and conveyance of said properties described in Exhibit "A", attached hereto, to Illinois Natural Gas Company, it would transfer, assign and convey to Panhandle Eastern Pipe Line Company, a Delaware corporation, all the remainder of its properties and assets, con-[fol. 29-43] sisting of that part of the properties and assets of Panhandle Illinois Pipe Line Company, not used exclusively in the furnishing of gas to consumers and other public utilities in the State of Illinois, a description of which property and assets is contained in the schedule herein above referred to, marked Exhibit "B" and attached to this order; that in consideration of such transfer, assignment and conveyance, Panhandle Eastern Pipe Line Company agreed to surrender to Panhandle Illinois Pipe Line Company all of the outstanding capital stock and debt of Panhandle Illinois Pipe Line Company, consisting of 42,980 shares of capital stock of the par value of $100.00 per share and $5,000,000 aggregate principal amount of promissory notes; that under the terms of said contract said Illinois natural gas in Texas and Kansas and transmits it through Panhandle Eastern Pipe Line Company for a supply of nat-

ural gas to be delivered to Illinois Natural Gas Company at the several points of connection of present or future spur or lateral lines or farm taps of said Illinois Natural Gas Company with the pipe line or lines of Panhandle Eastern Pipe Line Company; that when such gas contract is entered into the ownership of the main pipe lines, compressor station and other properties described in the schedule hereinabove referred to as Exhibit "B" will not be necessary to the Illinois Natural Gas Company in the conduct of a natural gas public utility business in Illinois;

"(7) that the consideration agreed upon between said companies for the transfer, assignment and conveyance of all of the properties and assets of Panhandle Illinois Pipe Line Company to Illinois Natural Gas Company and Pan-[fol. 29-44] handle Eastern Pipe Line Company, respectively, under the terms of said contract, is fair and reasonable and it is to the best interests of said companies that the transfer, assignment and conveyance of the properties and assets of Panhandle Illinois Pipe Line Company be consummated in the manner set forth in said contract, and that the ownership of the properties to be transferred by Panhandle Illinois Pipe Line Company to Illinois Natural Gas Company, used, useful and necessary exclusively in the conduct of a general gas public utility business in Illinois, free of any underlying debt, together with the gas contract herein mentioned, will enable Illinois Natural Gas Company to perform the duties of a gas public utility in the State of Illinois, and that the public will be convenienced by the transfer, assignment and conveyance of all of the properties and assets of Panhandle Illinois Pipe Line Company, in the manner and for the consideration provided for in said contract;

"(8) that said contract dated February 18, 1938, attached to the joint application herein as Exhibit "1", providing for the transfer, assignment and conveyance of all of the properties of Panhandle Illinois Pipe Line Company in the manner therein set forth and for the consideration therein provided is fair and reasonable and should be approved;

"(9) that Panhandle Illinois Pipe Line Company should be authorized to execute, acknowledge and deliver to peti-

tioner, Illinois Natural Gas Company, such instruments, bills of sale, assignments, deeds of conveyance and all other instruments needful or necessary to transfer, assign and convey to said Illinois Natural Gas Company its lateral [fol. 29-45] pipe lines and all appurtenances and equipment used or useful in connection with the operation thereof, together with all rights of way, grants, easements, licenses, permits, meter and regulator stations and station sites used in connection with the operation thereof, and all certificates of convenience and necessity for the construction, installation, maintenance and operation of said property, and for the sale and furnishing of natural gas through the same to the public directly or indirectly within the State of Illinois, and heretofore granted to said Panhandle Illinois Pipe Line Company, or its predecessor, by this Commission, a description of the property so to be transferred, assigned and conveyed to Illinois Natural Gas Company being contained in a schedule entitled "Schedule of Properties and Assets of Panhandle Illinois Pipe Line Company to be transferred, assigned and conveyed to Illinois Natural Gas Company," a copy of which is hereto attached, marked Exhibit "A" and made a part hereof, and that consent to and approval of such transfer, assignment and conveyance should be granted;

"(10) that petitioner, Illinois Natural Gas Company proposes to issue the said 28,000 shares of its capital stock of no par value for the acquisition of property, which property is more fully described in a schedule entitled "Schedule of Properties and Assets of Panhandle Illinois Pipe Line Company to be Transferred, Assigned and Conveyed to Illinois Natural Gas Company," attached hereto, marked Exhibit "A" and made a part of this order; that the property to be acquired by the issuance of the said stock is reasonably required by Illinois Natural Gas Company in order to pro- [fol. 29-46] vide a gas public utility service in the State of Illinois; that said property is not, in whole or in part, reasonably chargeable to operating expenses or to income; and that the prayer of petitioner, Illinois Natural Gas Company for authority to issue, and of petitioner, Panhandle Illinois Pipe Line Company to acquire, all of the authorized 28,000 shares of capital stock of no par value of the Illinois Natural Gas Company for the aforesaid purpose is reason-

able and should be granted subject to the terms and conditions hereinafter provided;

"(11) that the main pipe line, compressor stations and other property, which under the terms of the aforesaid contract Panhandle Illinois Pipe Line Company proposes to transfer, assign and convey to Panhandle Eastern Pipe Line Company, a detailed description of which is contained in a schedule entitled "Schedule of Properties and Assets of Panhandle Illinois Pipe Line Company to be Transferred, Assigned and Conveyed in Liquidation to Panhandle Eastern Pipe Line Company," attached hereto, marked Exhibit "B" and made a part hereof, constitutes property which upon consummation of the several transactions contemplated under the terms of the said contract dated February 18, 1938, and hereinafter authorized and approved, need not necessarily be owned by the Illinois Natural Gas Company, and that such ownership will not be necessary in the conduct of the gas public utility business of the last mentioned company in the State of Illinois; and that permission and authority should be granted to Panhandle Illinois Pipe Line Company to transfer, assign and convey the property described in said schedule, marked Exhibit "B" and attached hereto, to Panhandle Eastern Pipe Line [fol. 29-47] Company, and that consent to and approval of the transfer, assignment and conveyance of such property should be granted, and that said Panhandle Illinois Pipe Line Company should be authorized to execute, acknowledge and deliver to said Panhandle Eastern Pipe Line Company, a Delaware corporation, such instruments, bills of sale, assignments, deeds of conveyance and all other instruments needful or necessary to transfer and convey such property to said Panhandle Eastern Pipe Line Company;

"(12) that there should be granted to petitioner, Illinois Natural Gas Company, permission and authority to acquire, own, operate and maintain the properties and assets of Panhandle Illinois Pipe Line Company, specifically described in the schedule marked Exhibit "A" and made a part hereof, and said petitioner should be further authorized to purchase, transport, furnish and sell natural gas to the public in the State of Illinois directly and indirectly, under the certificates of convenience and necessity to be transferred or assigned to it as herein authorized, and that

this Commission should consent to and approve the acquisition of said property by said company;

"(13) that petitioner, Illinois Natural Gas company, should be authorized to enter into a gas contract with Panhandle Eastern Pipe Line Company for a supply of natural gas for resale by Illinois Natural Gas Company directly or indirectly to the public within the State of Illinois in substantially the form attached to the joint application herein, and marked Exhibit "8"; and

"(14) that said Illinois Natural Gas Company should be [fol. 29-48] authorized to acquire and own, and should be authorized to operate under, the several certificates of convenience and necessity heretofore granted by the Commission to said Panhandle Illinois Pipe Line Company, or its predecessor, described in the schedule marked Exhibit "A", attached hereto, the same as though said certificates had been granted by the Commission to Illinois Natural Gas Company in the first instance.

"It is Therefore Ordered that the contract by and between Panhandle Illinois Pipe Line Company, Illinois Natural Gas Company and Panhandle Eastern Pipe Line Company, dated February 18, 1938, copy of which is attached to the joint application herein, marked Exhibit "1" providing for the transfer, assignment and conveyance by Panhandle Illinois Pipe Line Company of all of its properties and assets, of whatsoever character and description, to Illinois Natural Gas Company and Panhandle Eastern Pipe Line Company, respectively, for the consideration stated therein, be and the same is hereby approved, and the Commission consents to the execution and carrying out of the terms thereof.

"It is Further Ordered that Illinois Natural Gas Company be, and it is hereby, authorized to issue 28,000 shares of its capital stock of no par value and to deliver all of said stock to Panhandle Illinois Pipe Line Company in consideration for the acquisition of the following property and for no other purpose: the property and assets now owned by Panhandle Illinois Pipe Line Company and specifically de- [fol. 29-49] scribed in a schedule entitled "Schedule of Properties and Assets of Panhandle Illinois Pipe Line Company to be Transferred, Assigned and Conveyed to

Illinois Natural Gas Company" attached hereto, marked Exhibit "A" and made a part hereof.

"It is Further Ordered that Illinois Natural Gas Company shall enter the said 28,000 shares of its capital stock on its books at the net book value of the assets to be acquired under the contract of February 18, 1938 herein approved.

"It is Further Ordered that petitioner, Panhandle Illinois Pipe Line Company, is authorized to acquire the aforesaid 28,000 shares of capital stock of Illinois Natural Gas Company under the terms of the aforesaid contract of February 18, 1938 and to execute, acknowledge and deliver to petitioner, Illinois Natural Gas Company, such instruments, bills of sale, assignments, deeds of conveyance, and all other instruments needful or necessary to transfer, assign and convey to Illinois Natural Gas Company the property and assets now owned by it and specifically described in a schedule entitled "Schedule of Properties and Assets of Panhandle Illinois Pipe Line Company to be transferred, assigned and conveyed to Illinois Natural Gas Company," attached hereto, marked Exhibit "A" and made a part hereof, and the consent and approval of the Commission to such transfer, assignment and conveyance is hereby granted.

"It is Further Ordered that petitioner, Illinois Natural Gas Company, be and it hereby is granted permission and [fol. 29-50] authority to acquire, own, operate and maintain the properties and assets of Panhandle Illinois Pipe Line Company, described in the schedule marked Exhibit "A" and made a part of this order, and is further authorized to purchase, transport, furnish, sell and distribute natural gas to the public within the State of Illinois, both directly and indirectly in the manner and within the territories in which the Panhandle Illinois Pipe Line Company is now authorized to render such services under certificates of convenience and necessity heretofore granted by this Commission to the last mentioned company or its predecessor, and the consent and approval of the Commission to the acquisition of said properties and assets and the carrying on of such business is hereby granted.

"It is Further Ordered that petitioner, Panhandle Illinois Pipe Line Company be and it hereby is authorized to execute, acknowledge and deliver to Panhandle Eastern Pipe Line Company, a Delaware corporation, such instru-

ments, bills of sale, assignments, deeds of conveyance and all other instruments needful or necessary to transfer, assign and convey to said Panhandle Eastern Pipe Line Company all of its main pipe lines, compressor stations and other properties described in a schedule entitled "Schedule of Properties and Assets of Panhandle Illinois Pipe Line Company to be Transferred, Assigned and Conveyed in Liquidation to Panhandle Eastern Pipe Line Company," attached hereto, marked Exhibit "B" and made a part of [fol. 29-51] this order, and the consent and approval of the Commission to the transfer, assignment and conveyance of such property to Panhandle Eastern Pipe Line Company is hereby granted provided that Panhandle Eastern Pipe Line Company shall surrender to Panhandle Illinois Pipe Line Company for cancellation and redemption all of Panhandle Illinois Pipe Line Company's outstanding capital stock and debt consisting of 42,980 shares of capital stock of the par value of $100.00 per share and $5,000,000 aggregate principal amount of promissory notes heretofore issued to said Panhandle Eastern Pipe Line Company, and that said Panhandle Eastern Pipe Line Company shall assume all of the remainder of debts, obligations and liabilities of Panhandle Illinois Pipe Line Company.

"It is Further Ordered that petitioner, Illinois Natural Gas Company, is hereby authorized to enter into a gas contract with Panhandle Eastern Pipe Line Company for a supply of natural gas for resale within the State of Illinois, in the form of contract attached to the joint application herein and marked Exhibit "8", and that such contract be executed and a copy hereof filed with this Commission before the Panhandle Illinois Pipe Line Company shall cease to operate as a public utility in the State of Illinois.

"It is Further Ordered that the approval of the aforesaid gas contract to be entered into between the Illinois Natural Gas Company and the Panhandle Eastern Pipe Line Company for a supply of natural gas for resale within the [fol. 29-52] State of Illinois is granted only upon express conditions as follows:

"(a) that the Commission may, and reserves the right to, require the said Illinois Natural Gas Company, or any successor in interest, to terminate the aforesaid contract in whole or in part at any time, whether within the original term of five (5) years or thereafter, in the event that a

supply of natural gas becomes available to the Illinois Natural Gas Company in the general area served by it with natural gas, at a lower price or upon more favorable conditions than the said gas is being obtained from the Panhandle Eastern Pipe Line Company, provided however that in the event of such termination for the reason aforesaid, the Panhandle Eastern Pipe Line Company shall be entitled to notice of at least one (1) year after the date of any order of the Commission requiring such termination, before the said termination become effective;

"(b) that the Commission may, and reserves the right to, require the Illinois Natural Gas Company, or any successor in interest, to terminate the aforesaid contract in whole or in part at any time, whether within the original term of five (5) years or thereafter, but upon reasonable notice, whenever in the opinion of the Commission the public interest for any reason other than that stated hereinbefore in sub-paragraph (a) requires the termination of the aforesaid contract;

"(c) that the aforesaid contract when executed contain appropriate clauses providing for the termination thereof in accordance with this order.

"It is Further Ordered that promptly upon consumma- [fol. 29-53] tion of the transfer, assignment and conveyance of the property and assets of Panhandle Illinois Pipe Line Company to Illinois Natural Gas Company and Panhandle Eastern Pipe Line Company, respectively, under the terms of the aforesaid contract dated February 18, 1938, said Illinois Natural Gas Company shall own and operate the portion of said property and assets transferred, assigned and conveyed to it as a public utility and shall file with this Commission rate schedules, rules, regulations and conditions of service substantially identical with the rate schedules, rules, regulations and conditions of service under which the gas public utility business of Panhandle Illinois Pipe Line Company within the State of Illinois is now being carried on and conducted, and that such rate schedules, rules, regulations and conditions of service under which the gas public utility business of Illinois Natural Gas Company shall be carried on and conducted, shall become effective as of the date of the transfer of said property.

"It is Further Ordered that upon consummation of the

several transactions contemplated under the terms of the aforesaid contract of February 18, 1938, and upon the transfer, assignment and conveyance of all of the property of Panhandle Illinois Pipe Line Company, in accordance with the terms of said contract, and of this order, and upon the execution of the aforesaid gas contract between the Illinois Natural Gas Company and the Panhandle Eastern Pipe Line Company, and the filing of a copy thereof with this [fol. 29-54] Commission, said Panhandle Illinois Pipe Line Company shall (a) forthwith cease operation as a public utility within the State of Illinois, (b) cremate its said promissory notes consisting of $5,000,000 aggregate principal amount of promissory notes, (c) cancel all of its capital stock and dissolve the corporation as provided by "The Business Corporation Act" in force in the State of Illinois, and (d) file a report (in duplicate) with the Commission, which report shall be signed and verified under oath by an executive officer of said company having knowledge of the facts, and shall show (1) the date as of which it transferred its property and ceased operations as a public utility, (2) the number of shares of its capital stock and the principal amount of its promissory notes surrendered to it by the Panhandle Eastern Pipe Line Company, (3) the amount of said securities cremated, (4) the date and amount of capital stock cancelled as provided by "The Business Corporation Act" in force in the State of Illinois, (5) the date of dissolution of Panhandle Illinois Pipe Line Company and (6) copies of all journal entries made on its books to reflect the transfer and disposition of all of its assets and the cancellation of all of its capital stock and notes and dissolution of the corporation, provided that if all of the transactions hereby authorized or required are not promptly consummated the Panhandle Illinois Pipe Line Company shall file its first report covering the required information not less than sixty (60) days after the date of this order [fol. 29-55] and additional reports every sixty (60) days thereafter until all of the said transactions have been executed and reported to the Commission.

"It is Further Ordered that upon the consummation of the several transactions contemplated under the terms of the aforesaid contract of February 18, 1938 between Illinois Natural Gas Company and Panhandle Illinois Pipe Line Company that Illinois Natural Gas Company shall file a report (in duplicate) with the Commission, which report

shall be signed and verified under oath by an executive officer of said company having knowledge of the facts, and shall show (1) the date as of which it began operations as a public utility, (2) the amount of capital stock issued, (3) the date or dates of such issuance, (4) to whom said stock was issued, (5) copies of all journal entries made on its books to reflect the acquisition of property and the issuance of its capital stock herein authorized, provided that if all of the transactions hereby authorized or required are not promptly consummated the Illinois Natural Gas Company shall file its first report covering the required information not less than sixty (60) days after the date of this order and additional reports every sixty (60) days thereafter until all of the said transactions have been executed and reported to the Commission.

"It is Further Ordered that Panhandle Illinois Pipe Line Company shall make final report to the Commission of its operation as a gas utility in the State of Illinois from the [fol. 29-56] last date covered in the last annual report made to the Commission by said company to the date of transfer of its properties and certificates of convenience and necessity to the Illinois Natural Gas Company, and that such report shall be made (in duplicate) upon the Annual Report Form Number 11 for Gas Utilities, and shall be filed with the Commission within ninety (90) days after the date of transfer of property herein authorized.

"It is Further Ordered that the consent and approval of the Commission herein granted to the transfer, assignment and conveyance by Panhandle Illinois Pipe Line Company of all of its properties and assets to Illinois Natural Gas Company and Panhandle Eastern Pipe Line Company be, and they are hereby, granted upon the condition that the original or true copies of the books and records of Panhandle Illinois Pipe Line Company be delivered to the Illinois Natural Gas Company, and that the same be retained and preserved by the said Illinois Natural Gas Company under the same rules for preservation of records as are lawfully established by the said Illinois Natural Gas Company or prescribed by this Commission for the preservation of the records of the last mentioned company.

"It is Further Ordered that Illinois Natural Gas Company shall enter the property acquired and the depreciation reserve applicable thereto on its books in conformity with Commission's General Order 143.

"It is Further Ordered that petitioner, Illinois Natural [fol. 29-57] Gas Company, shall before the delivery of certificates representing the stock herein authorized to be issued by it, cause to be printed, stamped or engraved upon the face of each of said stock certificates, for the proper and easy identification thereof, the following:

"Illinois Commerce Commission
Authorization No. *2461*
June, 1938"

"By order of the Commission at Chicago, Illinois, this 15th day of June, 1938.

(Signed) William W. Hart, *Secretary*". Stevens & Herndon, *Attorneys for Petitioner-Appellee.* John E. Cassidy, *Attorney-General, State of Illinois, Attorney for Illinois Commerce Commission.* Harry R. Booth, *Assistant Attorney General, Of Counsel.* (Seal.)

[fols. 30-31] IN SUPREME COURT OF ILLINOIS

Appeal. Circuit Court, (Coles)

No. 25992

CENTRAL ILLINOIS PUBLIC SERVICE COMPANY, et al., Appellees,

vs.

ILLINOIS NATURAL GAS COMPANY, Appellant

ORDER OF SUBMISSION—December 19, 1940

Now on this day come the parties hereto and this being one of the days set apart for the call of the docket under the rules of this Court, and it appearing to the Court that appellant, hath filed herein a duly certified transcript of the record and proceedings of the Court below, together with printed abstracts thereof, and briefs and arguments of counsel in support of the errors assigned herein, and entered motion to reverse the judgment and remand said cause and for costs, and the said appellees having entered motion to affirm said judgment and for costs and procedendo, and said motions being taken under advisement for final hearing, and the Clerk of this Court reporting that said

cause is now ready to be taken, and said cause is here submitted for the consideration and judgment of the Court:

Therefore it is ordered by the Court that this cause be and the same is hereby taken under advisement.

[fol. 32] IN SUPREME COURT OF ILLINOIS

Docket No. 25992—Agenda 55—December, 1940

THE CENTRAL ILLINOIS PUBLIC SERVICE COMPANY *et al.*, Appellees,

v.

THE ILLINOIS NATURAL GAS COMPANY, Appellant

OPINION—Filed February 18, 1941

Mr. Justice Farthing delivered the opinion of the court:

The Central Illinois Public Service Company filed with the Illinois Commerce Commission a petition for an order requiring the Illinois Natural Gas Company to furnish natural gas to it at wholesale. The gas company's defense was that it was engaged in interstate commerce and was under the exclusive jurisdiction of the Federal Power Commission and, therefore, the Illinois Commerce Commission lacked jurisdiction. The commission held against the gas company and granted the prayer of the petition. On appeal, the circuit court of Coles county affirmed this order and appellant has perfected a further appeal to this court.

The main question is whether the Illinois Natural Gas Company is engaged in interstate or intrastate commerce. The facts are not disputed. The Illinois Natural Gas Company is a wholly-owned subsidiary of the Panhandle Eastern Pipe Line Company, a Delaware corporation, hereafter called the Illinois Natural, owns certain lateral trans- Natural Gas Company will enter into a gas contract with its high pressure mains through several States, including Illinois. Its main runs in a general east and west direction through Illinois. The Illinois Natural Gas Company, hereafter called the Panhandle company. That company gathers mission lines and incidental equipment all of which are located in Illinois. Gas is delivered to it at the points where its lateral transmission lines intersect the high pressure main of the Panhandle company. Gas is furnished to the Illinois Natural pursuant to a contract between it and

the Panhandle company approved by the Illinois Commerce Commission. When the gas enters the lateral transmission lines of Illinois Natural pressure is reduced for economical transportation and delivery. This company delivers the gas from its lateral lines to local public utility companies, which, in turn, distribute it to the general public. Before delivery to these local utilities the pressure is further reduced.

Appellant argues that although all the property owned by it is located entirely in Illinois and although it sells natural gas only to Illinois utilities, it nevertheless is engaged in interstate commerce and is not subject to the [fol. 33] regulations of the Illinois Commerce Commission. In support of this position, it points out that in packing the high pressure transmission line from day to day with natural gas from the sources of supply, Panhandle estimates the quantities of natural gas that will be used by Illinois Natural and other companies purchasing from Panhandle, in Illinois and other States, and each day continuously transports sufficient gas to satisfy the requirements of all of these customers.

Several cases claimed by both sides to be more or less analogous to the one before us have been cited and discussed in the briefs. In *East Ohio Gas Co.* v. *Tax Commission,* 283 U. S. 465, 75 L. Ed. 117, the East Ohio Gas Company was an Ohio corporation which furnished natural gas to consumers in more than fifty municipalities in that State. It bought part of its gas from outside the State. At the State line the gas went into this company's high pressure transmission lines and these connected with distribution lines where less pressure was maintained. An Ohio statute taxed the gross receipts of corporations engaged in the business of supplying natural gas to consumers within the State. It was held the proceeds from the sale of gas bought outside the State were taxable under the statute and the contention that this was interstate commerce was overruled. The Supreme Court of the United States said: "The transportation of gas from wells outside Ohio by the lines of the producing companies to the State line and thence by means of appellant's high pressure transmission lines to their connection with its local systems is essentially national—not local—in character and is interstate commerce within as well as without that State. The mere fact that the title or the custody of the gas passes

while it is en route from State to State is not determinative of the question whether interstate commerce ends." This statement is relied on by appellant. However, the court went on to hold in that case: "But when the gas passes from the distribution lines into the supply mains, it necessarily is relieved of nearly all the pressure put upon it at the stations of the producing companies, its volume thereby is expanded to many times what it was while in the high pressure interstate transmission lines, and it is divided into the many thousand relatively tiny streams that enter the small service lines connecting such mains with the pipes on the consumers' premises. So segregated the gas in such service lines and pipes remains in readiness or moves for- [fol. 34] ward to serve as needed. The treatment and division of the large compressed volume of gas is like the breaking of an original package, after shipment in interstate commerce, in order that its contents may be treated, prepared for sale and sold at retail." It is important to note in considering the instant case that it is not claimed appellant was engaged in intrastate commerce as far as its relations with the Panhandle company are concerned. Here, as in the *East Ohio Gas Co. case*, the claim is made that after the gas is in the lateral lines of Illinois Natural, its pressure reduced and ready for delivery to local utilities, it is no longer in interstate commerce.

In *Missouri* v. *Kansas Natural Gas Co.* 265 U. S. 298, 68 L. ed. 1027, it was held the transportation of gas through pipe lines from one State to another for sale to distributing companies is interstate commerce. That same proposition is laid down in *Public Utilities Com.* v. *Landon*, 249 U. S. 236, 63 L. ed. 577. But in that case the court held: "But in no proper sense can it be said under the facts here disclosed, that sale and delivery of gas to their customers at burner tips by the local companies operating under special franchises constituted any part of interstate commerce. The companies received supplies which had moved in such commerce, and then disposed thereof at retail in due course of their own local business." The court also stated that "Interstate commerce is a practical conception and what falls within it must be determined upon consideration of established facts and known commercial methods."

In *Public Utilities Com.* v. *Attleboro Steam & Electric Co.* 273 U. S. 83, 71 L. ed 549, a Rhode Island company sold electricity to a Massachusetts firm and made delivery

at the State line. It was held this was interstate commerce and the rates could not be regulated by the Rhode Island Public Service Commission. That, clearly, was an attempt to regulate interstate commerce and is not in point here.

In *Southern Natural Gas Corp.* v. *Alabama,* 301 U. S. 148, 81 L. ed. 970, the question presented was whether the imposition of a franchise tax upon the Southern Natural Gas Corporation was invalid as a direct burden upon interstate commerce. There the Southern company was engaged in the transmission of natural gas from Louisiana and Mississippi to various States. It had contracts for delivery of natural gas to four purchasers in Alabama. Three were intrastate utilities and the fourth a consumer. The gas was delivered in continuous movement from the gas fields [fol. 35] without break or interruption to the point of delivery, viz., the meter house at which the gas so sold was measured for the purpose of payment. At this point pressure was reduced and the gas measured. The contracts with the utilities contained detailed provisions as to delivery, pressure, measurement, etc. The contract with the Tennessee company (the consumer) also provided the Southern company should maintain service lines to the different plants of the consumer. It was held the sale to this company was intrastate business. The court said there was no essential distinction between the establishment of such a local activity to meet the needs of consumers in industrial plants and the service to consumers in the municipalities which was found in the *East Ohio Gas Company case, supra.* The court also quoted with approval this language from *Missouri* v. *Kansas Natural Gas Co. supra*: "The business of supplying, on demand, local consumers is a local business, even though the gas be brought from another State and drawn for distribution directly from interstate mains; and this is so whether the local distribution be made by the transporting company or by independent distributing companies. In such case the local interest is paramount, and the interference with interstate commerce, if any, indirect and of minor importance."

We think clearly the local interest, in the case before us, is paramount and the national interest indirect and of minor importance. No attempt is made to regulate the transmission or delivery while the gas is in the high pressure lines, on its way through the State of Illinois or from a point without to a point within Illinois. No such at-

tempt is made until the gas has left the high pressure lines, its pressure reduced, and delivered to the wholly intrastate lines ready for delivery to local utilities. The question of what local utilities are entitled to be furnished with this gas is primarily one of local concern. Although the quantity of gas to be transmitted from the sources of supply will, of course, depend in part on the amount used in Illinois, that does not render the business of the distributing company in furnishing gas to local companies interstate in character.

In view of our holding that the order of the commission affects only intrastate commerce, the contention that the Natural Gas act (15 U. S. C. A. 717, *et seq.*) gives the Federal Power Commission exclusive jurisdiction of the [fol. 36] matters involved in this proceeding must be overruled. The provisions of that act plainly show they apply only to interstate commerce, and that the act was not intended to disturb the States in the exercise of their jurisdiction over the sale and distribution of natural gas in intrastate commerce. Thus, section 1(b) of the act reads, in part: "The provisions of this chapter shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption * * * but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas."

The judgment of the circuit court is affirmed.

Judgment affirmed.

[fols. 37-38] IN SUPREME COURT OF ILLINOIS

No. 25992

Appeal from Circuit Court, Coles County (2179)

CENTRAL ILLINOIS PUBLIC SERVICE COMPANY, et al., Appellees,

vs.

ILLINOIS NATURAL GAS COMPANY, Appellant

JUDGMENT—February 18, 1941

And now, on this day, this cause having been argued by counsel, and the Court, having diligently examined and in-

spected as well the record and proceedings aforesaid, as matters and things therein assigned for error, and now, being sufficiently advised of and concerning the premises for that it appears to the Court now here, that neither in the record and proceedings aforesaid, nor in the rendition of the Judgment aforesaid, is there anything erroneous, vicious of defective, and in that record there is no error.

Therefore, it is considered by the Court that the Judgment of the Circuit Court of Coles County aforesaid, Be Affirmed In All Things And Stand In Full Force And Effect, notwithstanding the said matter and things therein assigned for error. And it is further considered by the Court that the said Appellees recover of and from the said Appellant Costs by them in this behalf expended, to be taxed, and that they have execution therefor.

I, Edward F. Cullinane, Clerk pro tempore of the Supreme Court of the State of Illinois and Keeper of the records, files and Seal thereof, do hereby certify that the foregoing is a true copy of the final order of the said Supreme Court in the above entitled cause of record in my office.

In Testimony Whereof, I have set my hand and affixed the Seal of the said Supreme Court, in Springfield, in said State, this 6th day of March A. D. 1941.

Edward F. Cullinane, Clerk Pro Tempore. (Seal.)

[fol. 39] IN THE SUPREME COURT OF THE UNITED STATES

[Title omitted]

PETITION FOR APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS TO THE SUPREME COURT OF THE UNITED STATES —Filed April 22, 1941

To the Chief Justice of the Supreme Court of the State of Illinois:

Illinois Natural Gas Company, your Petitioner, respectfully shows:

1. Petitioner is the Appellant in the above entitled cause.

2. Appellee, Central Illinois Public Service Company, filed a petition (in the nature of a complaint) with the Illinois Commerce Commission on May 22, 1939 against Appellant,

seeking an Order from the Illinois Commerce Commission requiring Appellant to furnish said Appellee with wholesale natural gas at or near the City of Mattoon, Coles County, Illinois, and said Commission entered its Order on November 30, 1939, in favor of said Appellee, directing Appellant to make such installations and connections with Appellee's natural gas system at or near the City of Mattoon, Illinois as shall be adequate for supplying said Appellee with its natural gas requirements in the City of Mattoon, and other cit-es and communities in the State of Illinois and upon completion of said installations and connections to supply said Appellee with such natural gas requirements.

3. Appellant's petition for rehearing was filed with the Illinois Commerce Commission on December 28, 1939 and was denied on January 3, 1940.

[fol. 40] 4. An appeal from said Order of the Illinois Commerce Commission was duly perfected to the Circuit Court of Coles County, Illinois, which court affirmed said Order of the Illinois Commerce Commission on August 2, 1940.

5. Thereafter, an appeal was duly perfected to the Supreme Court of the State of Illinois, which court, on February 18, 1941 affirmed the judgment of the Circuit Court of Coles County. No motion for rehearing has been filed by Appellant and time therefor expired on March 5, 1941.

6. That as appears in the record and proceedings in this cause, there was drawn in question the validity of an Order of the Illinois Commerce Commission and of a statute of the State of Illinois, as applied to Appellant, and under the supposed authority of which statute said Order was made, on the ground of the repugnancy of said Order and said statute to the Constitution and laws of the United States in that said Order of the Illinois Commerce Commission and said statute, the Illinois Commerce Commission Act of June 29, 1921 (Chap. 111-2/3, Illinois Revised Statutes, 1939), and particularly Section 50 thereof, as applied to Appellant, and under the purported authority of which statute said Order was made, are in contravention of Article I, Section 8, Clause 3, of the Constitution of the United States of America and, as applied to Appellant, are in direct conflict with the Natural Gas Act, 52 Stat. 821-33 (U.S.C.A., Title 15, Sec. 717-717W). The final decision of the Supreme Court of the State of Illinois, which is the highest court of said state in

which a decision could be had, was in favor of the validity of said order of the Illinois Commerce Commission and of said statute of the State of Illinois, as applied to Appellant, and under the supposed authority of which the Order was made.

Wherefore, Petitioner prays for the allowance of an appeal from said Supreme Court of the State of Illinois to the Supreme Court of the United States in order that the decision of the Supreme Court of the State of Illinois may [fols. 41-42] be examined and reviewed and also prays that a transcript of the record, proceedings and papers in this cause, duly authenticated by the Clerk of the Supreme Court of the State of Illinois, may be sent to the Supreme Court of the United States as provided by law. Petitioner, desiring the appeal to be a supersedeas, prays an Order touching the security to be required of it and the approval of such bond as required in this case.

The errors upon which your Petitioner claims to be entitled to appeal are those above indicated and more fully set out in the Assignment of Errors filed herewith.

Dated this 21st day of April, 1941.

Glenn W. Clark, R. Allan Stephens, Brown, Hay & Stephens, Attorneys for Petitioner and Proposed Appellant.

[fol. 43] IN THE SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER ALLOWING APPEAL—Filed April 22, 1941

The petition of Illinois Natural Gas Company for an appeal in the above cause to the Supreme Court of the United States from the Supreme Court of the State of Illinois and the Assignment of Errors filed therewith and the record in said cause having been considered, it is

Ordered that an appeal be and the same is allowed to the Supreme Court of the United States from the Supreme Court of the State of Illinois as prayed in said petition and that the Clerk of the Supreme Court of the State of Illinois shall prepare and certify a transcript of the record and the proceedings in the above cause and transmit the same to

the Supreme Court of the United States within forty days from the date hereof.

It Is Further Ordered that said Illinois Natural Gas Company shall give good and sufficient security in the sum of Fifteen hundred ($1500.00) Dollars, that said Appellant, Illinois Natural Gas Company, shall prosecute said appeal to effect and if said Appellant fails to make its plea good, it shall answer all damages and costs.

The said Appellant now presenting a bond in the sum of Fifteen hundred ($1500.00) Dollars with The Century Indemnity Company as surety, it is

Ordered that the same be, and is hereby, approved.

[fols. 44-45] The appeal shall operate as a supersedeas.

Dated this 21" day of April, 1941.

Walter T. Gunn, Chief Justice of the Supreme Court of Illinois. (Seal.)

Attest: Edward F. Cullinane, Clerk of the Supreme Court of Illinois.

[fol. 46] IN THE SUPREME COURT OF THE UNITED STATES

[Title omitted]

ASSIGNMENT OF ERRORS—Filed April 22, 1941

The said Illinois Natural Gas Comapny, Appellant herein, assigns the following errors in the record and proceedings in this cause:

1. The Supreme Court of the State of Illinois erred in holding and deciding that the assumption of jurisdiction by Illinois Commerce Commission, the Order of the Illinois Commerce Commision and the Illinois Commerce Commission Act of June 29, 1921, being Chapter 111⅔, Illinois Revised Statutes, 1939, and particularly Section 50 thereof, as applied to Appellant, and under the supposed authority of which statute said Order was made, were valid and constitutional although said Order requires Appellant to subject itself and its activities to the jurisdiction of Illinois Commerce Commission, to render natural gas service to Appellee, Central Illinois Public Service Company, for its requirements for resale in the cities of Mattoon, Charleston, Paris and Effingham, Illinois and communities intermediate thereof, and to construct and extend a natural gas pipe

line and facilities for a distance of approximately twenty miles for such purposes, because said Order and said statute as so construed and applied are unconstitutional and void, in that they are repugnant to the Constitution of the United States and particularly Article I, Section 8, Clause 3, thereof.

2. The Supreme Court of the State of Illinois erred in upholding as valid the assumption of jurisdiction by the Illinois Commerce Commission, the Order of the Illinois [fol. 47] Commerce Commission, and the Illinois Commerce Commission Act of June 29, 1921, being Chapter 111⅔, Illinois Revised Statutes, 1939, and particularly Section 50 thereof, under the purported authority of which said Order was made, which, as construed and applied to appellant by said court, subject Appellant and its activities to the jurisdiction of the Illinois Commerce Commission and require Appellant to extend its natural gas pipe line and facilities for a distance of approximately twenty miles and to render natural gas service for the natural gas requirements of several cities and communities in the State of Illinois, because said Order and statute, as so construed and applied to Appellant, are illegal and void in that they are repugnant to and in direct conflict with the Natural Gas Act, 52 Stat. at L. 821-33, U. S. C. A., Title 15, Sec. 717-717W.

3. The Supreme Court of Illinois erred in deciding and holding that the activities of Appellant in transporting, selling and delivering natural gas in the State of Illinois constitute intrastate commerce rather than interstate commerce and that said Order of the Illinois Commerce Commission, as applied to Appellant and its activities, is not repugnant to Article I, Section 8, Clause 3, of the Constitution of the United States of America or to the Natural Gas Act, 52 Stat. at L. 821-33, Title 15, U. S. C. A. 717-717W.

4. In this cause there was drawn in question the validity of said Order of the Illinois Commerce Commission and of said statute of the State of Illinois (The Illinois Commerce Commission Act of June 29, 1921, Chapter 111⅔, Illinois Revised Statutes, 1939, and particularly Section 50 thereof), as applied to Appellant, and under the supposed authority of which statute said Order was made,

on the ground that said Order and said statute were repugnant to Article I, Section 8, Clause 3, of the Constitution of the United States of America, and to the Natural Gas Act, 52 Stat. at L. 821-33, U. S. C. A., Title 15, 717-717W, and the decision of the Supreme Court of the State [fols. 48-74] of Illinois, which was in favor of the validity of said Order and said statute, as applied to Appellant, is hereby assigned as error.

For which errors Appellant, Illinois Natural Gas Company, prays that said judgment of the Supreme Court of the State of Illinois, dated February 18, 1941, in the above entitled cause, be reversed and a judgment rendered in favor of the said Appellant, Illinois Natural Gas Company.

Dated this 21st day of April, 1941.

Glenn W. Clark, R. Allan Stephens, Brown, Hay & Stephens, Attorneys for Appellant, Illinois Natural Gas Company.

[fols. 75-79] Supersedeas bond on appeal for $1500 approved April 21, 1941 and filed April 22, 1941, omitted in printing.

[fols. 80-82] Citation in usual from showing service April 22, 1941 on Central Illinois Public Service Company and Illinois Commerce Commission omitted in printing.

[fol. 83] IN THE SUPREME COURT OF THE UNITED STATES

[Title omitted]

PRAECIPE FOR TRANSCRIPT OF RECORD—Filed April 24, 1941

To the Clerk of the Supreme Court of Illinois:

You are hereby requested to make a Transcript of Record to be filed in the Supreme Court of the United States, on or before the 31st day of May, 1941, pursuant to an appeal allowed in the above entitled cause, and to include in such Transcript of Record the following and no other papers and exhibits, towit:

1. Abstract of Record filed in the Supreme Court of the State of Illinois on November 9, 1940 by the Appellant.

2. Additional Abstract of Record filed in said Court on December 3, 1940 by the Appellees.

3. Pages 16 to 28, both inclusive, of the printed Rates, Rules and Regulations for natural gas service filed by the Illinois Natural Gas Company with the Illinois Commerce Commission, issued June 30, 1938, as appears at Item 182 of the original Record now on file in the Supreme Court of Illinois.

4. The stipulation for the introduction in evidence of No. 3 above, contained in lines 2 through 9 on page 145 of the original Record now on file in the Supreme Court of Illinois, being the statement beginning:

"Mr. Stevens: Could we make it more specific at this" and the seven succeeding lines.

5. That portion of the original Record now on file in the Supreme Court of Illinois, beginning on page 145 thereof with the following line:

[fols. 84-109] "Mr. Stevens: I think we introduced at the former—" and continuing through the line on page 150 thereof which reads:

"Mr. Farrell: The objection is overruled and the motion is denied."

6. Statement of Errors relied upon for reversal, appearing on pages 7 and 8 of Appellant's Statement, Brief and Argument, filed in the Supreme Court of Illinois.

7. Opinion of the Supreme Court of the State of Illinois in Case No. 25992, rendered on February 18, 1941.

8. All statements and motions required and permitted to be filed under the provisions of Rule 12 of the Rules of the Supreme Court of the United States, including (a) the Petition for Appeal, (b) the Order allowing appeal, (c) the Assignment of Errors, (d) Jurisdictional Statement of Appellant, (e) Appellant's Statement directing the attention of Appellees to the provisions of Paragraph 3 of Rule 12 of the Rules of the Supreme Court of the United States, and (f) Proof of Service upon Appellees of the papers listed in (a), (b), (c), (d) and (e) above.

9. Citation upon Appellees.

10. Praecipe and proof of service thereof upon Appellees.

Dated this 24th day of April, A. D. 1941.

Glenn W. Clark, R. Allan Stephens, Brown, Hay & Stephens, Attorneys for Illinois Natural Gas Company, Appellant.

Received a true copy of the foregoing Praecipe this 24th day of April, A. D. 1941.

George F. Barrett, Attorney for Illinois Commerce Commission, Appellee. Stevens & Herndon, Attorneys for Central Illinois Public Service Company, Appellee.

[fols. 110-111] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 112] IN THE SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF THE PARTS OF THE RECORD TO BE PRINTED—Filed May 26, 1941

Comes now Illinois Natural Gas Company, Appellant in the above entitled cause, and states that the points on which it intends to rely in this Court are those contained and set forth in the Assignment of Errors filed with the Clerk of this Court.

Appellant further states that the record as filed with the Clerk of this Court is deemed necessary to be printed for the consideration of the points Appellant intends to rely upon as aforesaid.

Glenn W. Clark, Russell Voertman, Albert C. Schlipf, Counsel for Appellant.

We hereby acknowledge service upon us this 21st day of May, 1941 of the foregoing Statement of Points to be Relied Upon and Designation of Parts of the Record to be Printed.

Central Illinois Public Service Company, by A. D. Stevens, Its Attorney. Illinois Commerce Commission, by George F. Barrett, Attorney General of the State of Illinois, Its Attorney.

Endorsed on Cover: File No. 45,427, Illinois Supreme Court, Term No. 100. Illinois Natural Gas Company, Appellant, vs. Central Illinois Public Service Company and Illinois Commerce Commission. Filed May 22, 1941. Term No. 100 O. T. 1941.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 1078

ILLINOIS NATURAL GAS COMPANY,
Appellant,

vs.

CENTRAL ILLINOIS PUBLIC SERVICE COMPANY AND ILLINOIS COMMERCE COMMISSION.

APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS.

STATEMENT AS TO JURISDICTION.

GLENN W. CLARK,
R. ALLAN STEPHENS,
Counsel for Appellant.

BROWN, HAY & STEPHENS,
Of Counsel.

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STATUTES CITED.

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Illinois Commerce Commission Act of June 29, 1921 (Chap. 111⅔, Illinois Revised Statutes, 1939), Section 50 2
Judicial Code, Section 237, as amended (28 U. S. C. A. 344a) 1
Natural Gas Act, 15 U. S. C. A. 717-717W 4, 9

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 1078

No. 25,992 in the Supreme Court of the State of Illinois.

ILLINOIS NATURAL GAS COMPANY,

Appellant,

vs.

CENTRAL ILLINOIS PUBLIC SERVICE COMPANY, ET AL.,

Appellees.

JURISDICTIONAL STATEMENT.

Statutory Provisions Sustaining Jurisdiction.

The statute believed to sustain appellate jurisdiction is Section 237, as amended, of the Judicial Code, U. S. C. A., Title 28, Section 344 (a), which provides that:

> "A final judgment or decree in any suit in the highest court of a State in which a decision in the suit could be had, where is drawn in question the validity of .. treaty or statute of the United States, and the decision is against its validty; or where is drawn in question the

validity of a statute of any State, on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, and the decision is in favor of its validity, may be reviewed by the Supreme Court upon appeal. The appeal shall have the same effect as if the judgment or decree had been rendered or passed in a court of the United States. The Supreme Court may reverse, modify, or affirm the judgment or decree of such State court, and may, in its discretion, award execution or remand the cause to the court from which it was removed by the appeal."

Statute of the State of Illinois, the Validity of Which is Involved.

The Order of the Illinois Commerce Commission, which is appended hereto, the validity of which is involved, was made on the 30th day of November, 1939. The statute under the purported authority of which said Order was made and the validity of which, as applied in this case, is involved, is the Illinois Commerce Commission Act of June 29, 1921 (Chap. 111-2/3, Illinois Revised Statutes, 1939) and particularly Section 50 thereof, which reads as follows:

"ADDITIONS, IMPROVEMENTS AND NEW STRUCTURES—JOINT CONSTRUCTION. § 50. Whenever the Commission, after a hearing had upon its own motion or upon complaint, shall find that additions, extensions, repairs or improvements to, or changes in, the existing plant, equipment, apparatus, facilities or other physical property of any public utility or of any two or more public utilities ought reasonably to be made or that a new structure or structures should be erected, to promote the security or convenience of its employees or the public, or in any other way to secure adequate service or facilities, the Commission shall make and serve an order directing that such additions, extensions, repairs, improvements or changes be made, or such structure or structures be erected in the manner and within the time specified in said order. If any additions, exten-

sions, repairs, improvements or changes, or any new structure or structures which the Commission has ordered to be erected, require joint action by two or more public utilities, the Commission shall notify the said public utilities that such additions, extensions, repairs, improvements or changes or new structure or structures have been ordered and that the same shall be made at the joint cost whereupon the said public utilities shall have such reasonable time as the Commission may grant within which to agree upon the apportionment or division of cost of such additions, extensions, repairs, improvements or changes or new structure or structures, which each shall bear. If at the expiration of such time such public utilities shall fail to file with the Commission a statement that an agreement has been made for a division or apportionment of the cost or expense of such additions, extensions, repairs, improvements or changes, or new structure or structures, the Commission shall have authority, after further hearing, to make an order fixing the proportion of such cost or expense to be borne by each public utility and the manner in which the same shall be paid or secured."

Date of the Judgment Sought to be Reviewed and of the Application for Appeal.

The date of the judgment of the Supreme Court of the State of Illinois appealed from is February 18, 1941.

Application for appeal was presented on the 21st day of April, 1941.

Nature of the Case, Rulings of the Court, the Manner and Method of Raising the Federal Questions Sought to Be Reviewed, and the Way in Which They Were Passed Upon in the Court Below.

Appellant, an Illinois corporation, is a natural gas transmission pipe line company transporting and selling natural gas at wholesale to various gas distributing utilities and to

four or five large industrial customers, all in the State
Illinois. Appellant's transmission lines connect with t
main gas transmission line of its parent company, Pa
handle Eastern Pipe Line Company, at various points in t
State of Illinois, and at the point of connection between t
facilities of said companies, appellant purchases from Pa
handle Eastern Pipe Line Company all of its natural ga
requirements.

Prior to the enactment of the Natural Gas Act, U. S. C. A
Title 15, Sec. 717-717W, appellant had filed with appelle
Illinois Commerce Commission, its rates, rules and regula
tions for natural gas service governing its wholesale sale
of natural gas, and, subsequent to the enactment of sai
Act, appellant made a similar filing with Federal Powe
Commission.

Panhandle Eastern Pipe Line Company, a Delaware co
poration, owns a natural gas transmission line which ex
tends from its production areas in Texas, Oklahoma an
Kansas, through the States of Oklahoma, Kansas, Missou
and Illinois to Dana, Indiana, where it connects with a
other gas transmission line. Panhandle Eastern Pipe Lin
Company sells natural gas at wholesale to gas distributin
utilities and industries along the route of its pipe line an
to appellant, its subsidiary, in Illinois.

The record shows that Panhandle Eastern Pipe Lin
Company, in packing its transmission line from day to da
with natural gas from its sources of supply, estimates th
quantities of natural gas which will be required by all of it
customers including appellant in the various States in whic
it sells natural gas and thus continuously transports suff
cient gas to satisfy the requirements of all of its customers
that the quantities of natural gas necessary to satisfy ap
pellant's requirements are transported continuously b
Panhandle Eastern Pipe Line Company from its sai
sources of supply to the various points of delivery whe

it is delivered to appellant without any reduction in pressure and appellant, without breaking the continuity of such transportation, carries said gas continuously through its gas transmission pipe line system with only such reduction in pressures as is calculated to effectuate the most economical transportation and delivery to its customers; that from day to day the requirements of all of appellant's customers are estimated in advance to enable Panhandle Eastern Pipe Line Company to deliver to appellant the necessary quantities of natural gas from day to day to fulfill the requirements of said customers of appellant; that in this manner natural gas which is contracted for by the appellant before the gas leaves the ground at the sources of supply of Panhandle Eastern Pipe Line Company is appropriated in a practical sense to appellant's various customers and is carried continuously and at high pressures through the facilities of Panhandle Eastern Pipe Line Company and appellant to appellant's various wholesale customers without unnecessary treatment, without break in transportation, and without storage, intermediate or otherwise.

Appellee, Central Illinois Public Service Company, an Illinois gas distributing utility under the jurisdiction of the Illinois Commerce Commission, sells natural gas at retail in various cities and communities in said State, among which are Paris, Charleston, Mattoon and Effingham, which towns are served by its interconnected distribution system.

It purchases natural gas for resale in said towns at the Illinois-Indiana State line from Universal Gas Company, which is engaged in the sale and transportation of natural gas within the State of Indiana, receiving its natural gas supply from the interstate pipe line of the Kentucky Natural Gas Company. The line of Kentucky Natural Gas Company, which is intersected by that of Universal Gas Company, is supplied with natural gas from both the line of Panhandle Eastern Pipe Line Company in Indiana and

gas wells in the State of Kentucky and this gas after being delivered into the intersecting line of Universal Gas Company and resold by Universal Gas Company to appellee, Central Illinois Public Service Company, is ultimately sold at retail by the said appellee in the aforesaid communities in Illinois.

On May 22, 1939 appellee, Central Illinois Public Service Company, filed its application (in the nature of a complaint) with appellee, Illinois Commerce Commission, alleging that its pipe line from the Illinois-Indiana State line near Paris, Illinois to and serving Paris, Mattoon, Charleston and Effingham, Illinois was inadequate to assure dependable service to all of said towns and petitioning Illinois Commerce Commission to require appellant to furnish natural gas to it at or near Mattoon, Illinois, which town is located at the approximate center of its aforesaid interconnected distribution system, a distance of about twenty miles from appellant's source of supply (the interstate pipe line system of Panhandle Eastern Pipe Line Company) for all of said appellee's requirements in said group of towns.

In its answer (response) to said application, appellant alleged its business to be interstate commerce, recited the enactment of the Natural Gas Act effective June 21, 1938, challenged the jurisdiction of the Illinois Commerce Commission on the ground that appellant's business and operations constituted interstate commerce and that the Federal Power Commission had exclusive jurisdiction over appellant and the subject matter of the proceeding and prayed dismissal of the application of Central Illinois Public Service Company for lack of such jurisdiction.

The Illinois Commerce Commission heard the case and entered its order refusing to divest itself of jurisdiction in the premises, granting the application of appellee, Central Illinois Public Service Company, and directing appellant to make the necessary installations to connect with the dis-

tribution system of Central Illinois Public Service Company at or near Mattoon, Illinois. Pertinent excerpts from said Order are as follows:

> "Although there was no substantial disagreement between the parties as to the material facts established by the evidence, the Respondent does challenge the Complainant's right to demand the service and the right of the Commission to compel its rendition on the sole ground that Respondent's operations from the time it receives the gas from Panhandle Eastern are a part of and constitute interstate commerce and for that reason are under the jurisdiction and control of Federal Power Commission and are therefore matters over which this Commission has no authority."
>
> "The Commission having considered the evidence • • • is of the opinion and finds:
>
> "(1) That it has jurisdiction of the subject matter of this proceeding and the parties herein.
>
> • • • • • • •
>
> "(10) That each and every of Illinois Natural Gas Company's handling, dealings, operations and transactions with respect to such natural gas subsequent to its purchase and receipt by said last named company from Panhandle Eastern Pipe Line Company take place within and are of paramount interest to the State of Illinois, and are intrastate, and in no sense interstate, in character."

Thereafter, and in due time, appellant filed with Illinois Commerce Commission its Motion for Rehearing in which it again challenged the jurisdiction of said Commission on the ground that appellant's business was interstate in character and therefore subject to the exclusive jurisdiction of Federal Power Commission under the Natural Gas Act, assailed the Order of Illinois Commerce Commission and the statute under which it was made as invalid as applied to appellant on the ground that it interfered with and

placed a burden upon interstate commerce, in contravention of Article I, Section 8, Clause 3, of the Constitution of the United States, and challenged the conclusions of law of the Illinois Commerce Commission to the effect that appellant's business constituted intrastate commerce on the ground that such conclusions were opposed to the undisputed evidence. Said petition for rehearing was denied without a written opinion.

Appeal was duly perfected by appellant to the Circuit Court of Coles County, Illinois, where review was had on the record made in the proceedings before the Illinois Commerce Commission. By brief (the briefs before the Commission were submitted) appellant urged the same questions as were raised in the original proceedings before said Commission. The judgment of the Circuit Court of Coles County was as follows:

> "The Court after due deliberation approves the Order of the Illinois Commerce Commission entered November 30, 1939."

Thereafter appellant duly perfected its appeal to the Supreme Court of Illinois from the judgment of the Circuit Court of Coles County, Illinois. In the "Statement of Errors Relied upon for Reversal" contained in its Statement, Brief and Argument filed in said State Supreme Court, appellant included, among other alleged errors, the following:

> "1. The Illinois Commerce Commission was without jurisdiction to hear and determine the matter in controversy or to enter its order dated November 30, 1939 in the proceeding before it, because Appellant's operations and business are wholly interstate in character and as to matters in controversy in the proceeding before the Illinois Commerce Commission, the Appellant and the subject matter are under the exclusive jurisdiction of the Federal Power Commission under the

Natural Gas Act, 52 Stat. 821-33 (15 U. S. C. A. 717-717W).

"2. The Illinois Commerce Commission Act of June 29, 1921 is invalid insofar as it may authorize the order of November 30, 1939, entered by the Illinois Commerce Commission, in that the order would interfere with and place a burden upon interstate commerce in contravention of Article I, Section 8, Clause 3, of the Constitution of the United States of America.

* * * * * * *

"4. The conclusions of law of the Illinois Commerce Commission to the effect that Appellant's business and operations constitute intrastate commerce are not supported by and are contrary to the evidence."

Appellant's arguments in said Statement, Brief and Argument were directed at said errors.

The judgment of the Supreme Court of Illinois affirmed the judgment of the Circuit Court of Coles County, Illinois. A copy of the opinion of the Illinois Supreme Court is appended hereto.

The Following Cases Are Believed to Sustain the Jurisdiction of the United States Supreme Court.

Texas & N. O. R. Co. v. *Sabine Tram.*, 227 U. S. 111, 57 L. ed. 442;

R. R. Comm. v. *Texas & P. R. Co.*, 229 U. S. 336, 57 L. ed. 1215;

Western Oil Refining Co. v. *Lipscomb*, 244 U. S. 346, 61 L. ed. 1181;

Western Union Tel. Co. v. *Foster*, 247 U. S. 105, 62 L. ed. 1006;

Pennsylvania v. *West Virginia*, 262 U. S. 553, 67 L. ed. 1117;

Missouri ex rel. Barrett v. *Kansas Natural Gas Co.*, 265 U. S. 298, 68 L. ed. 1027;

Alabama & Vicksburg Ry. Co. v. *Jackson & Eastern Ry. Co.*, 271 U. S. 244, 70 L. ed. 928;

Public Utilities Comm. of Rhode Island v. *Attleboro Steam & Elec. Co.*, 273 U. S. 83, 71 L. ed. 549;

Harold B. Fiske v. *State of Kansas*, 274 U. S. 380, 71 L. ed. 1108;

People of the State of N. Y. ex rel. George W. Bryant v. *Charles F. Zimmerman, et al.*, 278 U. S. 63, 73 L. ed. 184;

Currin v. *Wallace*, 306 U. S. 1, 83 L. ed. 441.

Statement of the Grounds Upon Which it is Contended the Questions Involved Are Substantial.

The continuous and uninterrupted transportation of natural gas from the source of supply in one state to the place of intended destination in another state, regardless of the passing of title and custody thereof en route, as typified by the facts in the present case, uniformly has been held by the Supreme Court of the United States to constitute interstate commerce. *Peoples Natural Gas Co.* v. *Public Service Commission of Pennsylvania*, 270 U. S. 550, 70 L. ed. 726, and cases therein cited.

A State law which by its necessary operation or incidence prevents, obstructs or burdens such transmission is a regulation of and prohibited interference with interstate commerce. *Pennsylvania* v. *West Virginia*, 262 U. S. 553, 67 L. ed. 1117, and cases therein cited.

Moreover, by the enactment of the Natural Gas Act, Congress has committed to the charge of the Federal Power Commission jurisdiction over and control of virtually every important phase of the activities of natural gas companies engaged in the interstate transportation and sale of natural gas. As a part of the comprehensive control over interstate natural gas companies possessed by the Federal Power Commission, are the power to determine the neces-

sity and occasion for the construction and extension of facilities or service by a natural gas company and the power to compel the extension of such facilities and service if such be necessary or desirable in the public interest (U. S. C. A., Title 15, Sec. 717f (a)), together with the power to prohibit one natural gas company (Appellant) from encroaching upon a market in which natural gas is already being served by another natural gas company (Universal Gas Company) except upon the condition that the Federal Power Commission shall first find and determine for itself that the present or future public convenience and necessity require or will require such facilities and extensions thereof (U. S. C. A., Title 15, Sec. 717f (c)). The Illinois Commerce Commission has, therefore, to the extent that its Order compels appellant to deviate from the applicable provisions of the Natural Gas Act, usurped the functions of the Federal Power Commission and intruded into a field of regulation reserved exclusively by the supreme law of the land to the Federal Power Commission.

Acts of Congress in relation to interstate commerce are supreme and there can be no divided authority over such commerce. *Missouri Pac. Ry. Co.* v. *Stroud*, 267 U. S. 404, 69 L. Ed. 683; *Alabama & Vicksburg Ry. Co.* v. *Jackson and Eastern Ry. Co.*, 271 U. S. 244, 70 L. Ed. 928.

Respectfully submitted,

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Illinois Natural Gas Company.

EXHIBIT "A".

STATE OF ILLINOIS.

ILLINOIS COMMERCE COMMISSION.

27906.

CENTRAL ILLINOIS PUBLIC SERVICE COMPANY

vs.

ILLINOIS NATURAL GAS COMPANY.

In the Matter of the Application for an Order by Commission Directing Respondent to Furnish Wholesale Natural Gas Service to Petitioner at or Near Mattoon, Illinois.

Order.

BY THE COMMISSION:

On May 22, 1939, the Central Illinois Public Service Company, an Illinois corporation, filed with the Commission a petition (in the nature of a complaint) against the Illinois Natural Gas Company, also an Illinois corporation, seeking an order from the Commission requiring the respondent to furnish complainant with wholesale natural gas service at or near the City of Mattoon, Coles County, Illinois.

Pursuant to due notice as required by law and the rules and regulations of the Commission, hearings were held in the cause on June 6th and June 21st, 1939 at the Springfield, Illinois, offices of the Commission.

It appears from the record that the complainant has for some years past been engaged in the business of supplying and distributing natural gas to the public at retail in the cities of Mattoon, Effingham, Paris and Charleston, and small intermediate communities, all in the State of Illinois; that Charleston with a population of about 8000, and Paris with a population of about 9000, are located respectively twelve and forty miles east of Mattoon which has a population of about 15000; and that Effingham, with a population of about 5000, is located approximately thirty miles southwardly from Mattoon.

It further appears that for many years prior to 1932, when complainant began serving said cities with natural gas, it served them with artificial gas from local plants, but in 1927, in order to obtain the economies of quantity manufacture in a centralized plant, it installed a four-inch transmission main from its Mattoon plant to Charleston, and the next year extended said main to Paris, and that two years later complainant installed a like four-inch main from its Mattoon plant to Effingham.

It further appears that since the substitution of natural for artificial gas service by the complainant, it has been receiving natural gas at a point near the City of Paris which it transmits through its four-inch main to Charleston, thence to Mattoon and thence to Effingham; that the complainant received its supply of gas at Paris from the Indiana Consumers Company, a company over which this Commission has no control, and under such circumstances as to leave it dependent upon delivery only from hour to hour.

It further appears that the complainant's main from Mattoon through Charleston to Paris was designed for operation at a pressure of only 100 pounds; that said main at such designed pressure lacks physical capacity to transmit natural gas from Paris in quantities required by complainant at Charleston, Mattoon and Effingham; that because the requirements of the last three named cities have outgrown the lines capacity, complainant is confronted with the necessity of either installing an additional main at a cost of approximately a quarter of a million dollars, or of obtaining natural gas at Mattoon from respondent; that procurement of gas from respondent would not only insure continuity of supply, but would avoid the capital and operating expenses incident to the construction of an additional main and enable complainant to serve its customers in all of the aforesaid cities and the communities intermediate thereof with a gas of higher b. t. u. content at lower rates.

It further appears that the respondent, Illinois Natural Gas Company (hereinafter sometimes referred to as "Illinois Natural") is a subsidiary of the Panhandle Eastern Pipe Line Company (hereinafter sometimes referred to as "Panhandle Eastern"), a Delaware corporation; that prior to June 15, 1938, all of the physical property in Illinois

now owned by respondent, and all the physical property now owned by Panhandle Eastern (excepting in both cases minor subsequent additions) was owned and operated by the Panhandle Illinois Pipe Line Company (hereinafter sometimes referred to as "Panhandle Illinois"), also an Illinois corporation and a subsidiary of Panhandle Eastern; that the property of Panhandle Illinois then embraced (1) a large high pressure gas main extending across the State of Illinois from a point on the state line near Pleasant Hill, Pike County, Illinois, to a point near the Indiana-Illinois state line in Edgar County, Illinois, with incidental pressure-boosting equipment, and (2) a number of lateral mains leading from Illinois points on this high pressure main to the distribution systems of utilities operating in various Illinois cities, with the equipment incident to such laterals; that Panhandle Illinois carried on both the transmission of gas through its large high pressure main into and across the State of Illinois, and the transmission of gas through its laterals to local utilities as an Illinois public utility, under certificates of public convenience and necessity and in accordance with rates, rules, regulations and conditions of service, issued and approved by this Commission.

It further appears that in February, 1938, the respondent company, Illinois Natural, and Panhandle Illinois filed with this Commission, as Docket No. 26553, a joint petition wherein they sought an order approving and authorizing the execution and carrying out of a three party contract providing for the transfer by Panhandle Illinois of its large high pressure main extending across the state and its incidental boosting equipment, to Panhandle Eastern; and the transfer, assignment and conveyance to respondent of all Panhandle Illinois' remaining property and assets, including the laterals and their incidental equipment and the business of supplying Illinois utilities; that under the terms of such contract respondent was to take over so much of Panhandle Illinois' operations and business as comprised the rendering of gas service as a public utility within the State of Illinois, and to own and thenceforth operate all the property to be acquired by it, in the carrying on of a general gas public utility business within the State under the

jurisdiction of this Commission in accordance with rates, rules, regulations and conditions of service approved by the Commission.

It further appears that the purpose of the proceeding was represented to the Commission by both respondent and Panhandle Illinois to be "the separation of the property and business of Panhandle Illinois Pipe Line Company to the end that the property and business which is purely intrastate and of a local utility character, will be owned and operated by the Illinois Natural Gas Company, an Illinois corporation, operated as a public utility in this state, and that the main line and compressor stations not used, useful or necessary in the conduct of a public utility business be transferred to the Panhandle Eastern Pipe Line Company, a Delaware corporation."

It further appears that in such proceeding the Commission was also asked to approve a contract between respondent and Panhandle Eastern for the furnishing by Panhandle Eastern to respondent of all gas required by respondent for resale by respondent to the several distributing companies then, or thereafter to be, served by it, delivery of the gas to respondent to be at the respective connections of respondent's laterals with the large high pressure main to be acquired by Panhandle Eastern, up to which points ownership, control and possession of and responsibility for the gas would be in Panhandle Eastern, but at which points ownership and exclusive control, possession and responsibility should pass to respondent.

It further appears that by order entered June 15, 1938, the Commission approved the carrying out of the aforesaid proposals, and issued to respondent the requisite certificates of convenience and necessity, and that thereafter the proposed transactions were consummated and respondent thereupon began, and has since carried on, under rates, rules, regulations and conditions of service approved by this Commission, a public utility business in the furnishing of natural gas in Illinois to Illinois distributing gas public utilities for distribution by them in this State.

It further appears that all gas handled or in any way dealt with by respondent is obtained by it from Panhandle Eastern under the before mentioned contract, and its terms

expressly limit the gas to be delivered by Panhandle Eastern and received by respondent to that required in territory for which respondent has been, or shall be, granted certificates of convenience and necessity by this Commission; that such gas is delivered by Panhandle Eastern and received by respondent at the points of connection between Panhandle Eastern's main and respondent's laterals; that up to these points of delivery ownership, control, possession and responsibility are in Panhandle Eastern; that upon delivery at these points ownership and "exclusive" control, possession and responsibility pass to respondent; that the contract provides in detail for accurate measurement at points of delivery and requires payment by respondent to Panhandle Eastern according to such measurement; that all physical property in any way devoted to the treatment and handling of the gas from the time of its delivery by Panhandle Eastern to respondent until its delivery by respondent to respondent's customers is owned and operated by respondent and located in Illinois; that all physical treatment and handling of the gas from the time of its delivery by respondent to respondent's customers is done by respondent and occurs entirely within the State of Illinois; that no gas received by respondent moves, or is intended to move, outside of the State of Illinois and all is ultimately consumed within this State; that immediately upon its receipt of the gas from Panhandle Eastern, respondent reduces the pressure in each of its laterals to such amount as results in the most economical transportation commensurate with the requirements of its customers; that respondent further reduces the pressure at the termination of its laterals to meet its customer's needs and the gas is all handled by respondent in accordance with rates, rules, regulations and conditions of service on file with and approved by this Commission.

It further appears, and the respondent agrees, that the rendition of the service as requested by complainant would be profitable to respondent, and both in negotiations had with complainant prior to the beginning of this proceeding, and before the Commission during the progress of the hearings, the respondent stated its willingness to render

the service provided it receives the necessary lawful authority to do so.

Although there was no substantial disagreement between the parties as to the material facts established by the evidence, the respondent does challenge the complainant's right to demand the service and the right of the Commission to compel its rendition, on the sole ground that respondent's operations from the time it receives the gas from Panhandle Eastern are a part of and constitute interstate commerce, and for that reason are under the jurisdiction and control of the Federal Power Commission and are therefore matters over which this Commission has no authority.

It must be conceded that the respondent's procurement of the gas at the respective points of delivery are interstate matters, but respondent's position that the interstate character which prevails to those points must be further extended and made to cover its later dealings with the gas subsequent to its receipt, is untenable in the light of the foregoing undisputed facts. It is true that the movement of the gas through respondent's laterals is caused by what remains, after respondent's reductions, of pressure supplied in effecting its prior interstate transmission, but such continuity of movement is, as is universally held by judicial authority, in no sense controlling, and may exist with respect to intrastate commerce as well as interstate, depending upon the particular facts. In this case the same pressure continues to move the gas to the burners of the patrons of respondent's customers, a movement intrastate beyond any doubt.

Putting aside all question as to the extent of authority given the Federal Power Commission by the Natural Gas Act, it would seem that the record in this case so manifestly discloses respondent's operations subsequent to its receipt of the gas to be so completely local to Illinois, and so wholly intrastate in character, as to preclude regulation or control by any Federal agency.

What constitutes interstate commerce is not a matter for determination by legal formula, but is to be determined from the facts individual to each case as it arises. "Interstate commerce is a practical conception and what falls

within it must be determined on consideration of esta lished facts and known commercial methods." The fa that a commodity is brought across state lines of itse raises no controlling implication that subsequent dealin with respect to it remain interstate matters. The highe judicial authorities are unanimous in the holding that t interstate character created by transportation across sta lines may cease upon arrival at destination within a stat and be thereafter succeeded by a character wholly intr state.

The decisive question in this case is whether respondent dealings and transactions with respect to the gas subsequer to its receipt at points of delivery disclose a termination o those dealings and transactions by which the gas is brough into Illinois and delivered to respondent by Panhandle East ern, and the beginning and thenceforth carrying on of othe new and different dealings and transactions with new an different parties which concern matters wholly confined t Illinois in which the interest local to this State is permanent

The evidence clearly indicates that respondent is engage in two characters of business with respect to its gas. On is made up of its dealings and transactions with Panhandl Eastern in obtaining from that company the gas and it transmission to the various points of delivery in Illinois and the other of its dealings and transactions in disposin of the gas to its Illinois customers after having received it No difference is conceivable between respondent's presen handling of the gas and its present dealings and trans actions concerning it subsequent to its receipt, and thos which would prevail were respondent receiving the gas fro its own wells located at the respective points of receip within this State. The purposes and business of respond ent, disclosed by its actions and actual operations as wel as by the avowed purpose and intention formerly declare by it to this Commission, clearly establish the closing of it interstate relations upon its receipt of the gas, and the be ginning at that point of dealings affecting only and relatin solely to Illinois.

The Commission having considered the evidence an briefs of the respective parties, and being fully advised i the premises, is of the opinion and finds:

(1) that it has jurisdiction of the subject matter of this proceeding and the parties herein;

(2) that the Central Illinois Public Service Company, is an Illinois corporation, and is engaged in the business of furnishing natural gas service for public use in the cities of Mattoon, Paris, Charleston and Effingham and small communities intermediate thereof, and in so doing is a public utility within the meaning of Section 10 of "An Act concerning public utilities," in force July 1, 1921;

(3) that the aforesaid Central Illinois Public Service Company now serves the above mentioned cities and intermediate communities with natural gas procured near the City of Paris, Illinois, thence transmits it to the cities of Charleston, Mattoon and Effingham by means of a four-inch transmission main of which the portion between Paris and Mattoon, a distance of approximately forty miles, has an age of eleven or more years; that said main was designed for operation at a pressure of 100 pounds; that said main at such designed pressure lacks physical capacity to transmit natural gas from Paris in quantities required by the Central Illinois Public Service Company at Charleston, Mattoon and Effingham and intermediate communities;

(4) that the natural gas now served by the Central Illinois Public Service Company in the cities of Paris, Charleston, Mattoon and Effingham and intermediate communities is procured near Paris from the Indiana Consumers Company under circumstances leaving the Central Illinois Public Service Company dependent upon delivery from hour to hour and from a company over which this Commission has no jurisdiction or control, and that to continue to supply Charleston, Mattoon and Effingham from such source would require the installation of an additional main from Paris to Mattoon at a cost of approximately a quarter of a million dollars;

(5) that the procurement of natural gas from Illinois Natural Gas Company at Mattoon for the aforesaid cities and intermediate communities would not only make unnecessary the installation of an additional main between Mattoon

and Paris, but would provide Central Illinois Public Service Company with natural gas of a higher b.t.u. than that now received by it and would enable it to serve its customers in said cities and communities with natural gas service at lower rates;

(6) that the natural gas service sought by the Central Illinois Public Service company can be rendered by the Illinois Natural Gas Company with a reasonable profit to the latter company;

(7) that the Illinois Natural Gas Company, is an Illinois corporation, engaged in the business of furnishing natural gas at wholesale to Illinois natural gas distributing companies in the general territory extending across the central portion of this State from the Mississippi River near Pleasant Hill, Pike County, Illinois, to a point on the Indiana-Illinois state line in Edgar County, Illinois, pursuant to certificates of convenience and necessity granted by this Commission and in accordance with rates, rules, regulations and conditions of service filed with and approved by this Commission, and is a public utility within the meaning of Section 10 of "An Act concerning public utilities," in force July 1, 1921;

(8) that the Illinois Natural Gas Company procures the natural gas so dealt with by it from a large gas transmission main owned and operated by the Panhandle Eastern Pipe Line Company, a Delaware corporation, extending across the State of Illinois from a point on the state line near Pleasant Hill, Pike County, Illinois, to a point on the Indiana-Illinois state line in Edgar County, Illinois, through which said last named company transmits natural gas across the Illinois-Missouri state line into the State of Illinois and there delivers it to the Illinois Natural Gas Company at various points of connection between its large transmission line and lateral mains, owned by the Illinois Natural Gas Company, and used by the latter company exclusively in the transportation of such natural gas in Illinois to customers of such latter company, at which aforementioned points of connection ownership and exclusive control, possession and

responsibility vest in the said Illinois Natural Gas Company;

(9) that immediately upon its receipt of natural gas from the Panhandle Eastern Pipe Line Company, the Illinois Natural Gas Company reduces the pressure in each of its laterals to such amount as results in the most economical transportation commensurate with the requirements of its customers, and that respondent further reduces the pressure at the termination of its laterals to meet the requirements of its customers with respect thereto;

(10) that each and every of Illinois Natural Gas Company's handling, dealings, operations and transactions with respect to such natural gas subsequent to its purchase and receipt by said last named company from the Panhandle Eastern Pipe Line Company take place within and are of paramount interest to the State of Illinois, and are intrastate, and in no sense interstate, in character;

(11) that the public convenience and necessity requires that the prayer of the petition of the Central Illinois Public Service Company should be granted and that the Illinois Natural Gas Company should be ordered, directed and authorized to proceed with reasonable dispatch to make such installations and connections with the Central Illinois Public Service Company's natural gas system at or near the City of Mattoon, Illinois, as shall be adequate for the supplying by Illinois Natural Gas Company to the Central Illinois Public Service Company of the latter company's natural gas requirements at the cities of Mattoon, Charleston, Paris and Effingham and the communities intermediate thereof, and that a certificate of public convenience and necessity should be issued to the Illinois Natural Gas Company to make such installations and connections and engage in such wholesale natural gas business, and that beginning with the construction of such installations and connections the said Illinois Natural Gas Company should report, in writing, at thirty day intervals, to the Secretary of this Commission, at Springfield, Illinois, the progress being made with the construction of such installations and connections;

(12) that upon completion of said installations and connections the Illinois Natural Gas Company should begin, and thereafter until further order of this Commission continue, to supply the Central Illinois Public Service Company at said connections with natural gas sufficient in quantities to meet said latter company's needs at the aforesaid cities of Mattoon, Charleston, Paris and Effingham and intermediate communities under the rates, rules, regulations and conditions of service which the said Illinois Natural Gas Company now has, or may hereafter have, on file with and approved by this Commission; and

(13) that the Commission should retain jurisdiction of the subject matter of this proceeding and the parties hereto, for the purpose of entering such order or further orders as the Commission may deem meet.

It Is Therefore Ordered by the Commission that the prayer of the petition of the Central Illinois Public Service Company be, and it is hereby, granted, and that the Illinois Natural Gas Company be, and it is hereby, ordered, directed and authorized to proceed with reasonable dispatch to make such installations and connections with the Central Illinois Public Service Company's natural gas system at or near the City of Mattoon, Illinois, as shall be adequate for the supplying of Illinois Natural Gas Company to the Central Illinois Public Service Company of the latter company's natural gas requirements at the cities of Mattoon, Charleston, Paris and Effingham and the communities intermediate thereof, and that a certificate of public convenience and necessity be, and it is hereby ordered issued to the Illinois Natural Gas Company to make such installations and connections and engage in such wholesale natural gas business, and that beginning with the construction of such installations and connections the said Illinois Natural Gas Company shall report, in writing, at thirty day intervals, to the Secretary of this Commission, at Springfield, Illinois, the progress being made with the construction of such installations and connections.

It Is Further Ordered that upon completion of said installations and connections the Illinois Natural Gas Company shall begin and thereafter until further order of this

Commission continue to supply the Central Illinois Public Service Company at said connections with natural gas sufficient in quantities to meet said latter company's needs at the aforesaid cities of Mattoon, Charleston, Paris and Effingham and intermediate communities under the rates, rules, regulations and conditions of service which the said Illinois Natural Gas Company now has, or may hereafter have, on file with and approved by this Commission.

It Is Further Ordered that the Commission retain jurisdiction of the subject matter of this proceeding and the parties hereto, for the purpose of entering such other or further orders as the Commission may deem meet.

By order of the Commission at Chicago, Illinois, this 30th day of November, A. D. 1939.

(Signed) JOSEPH E. KNIGHT,
[SEAL.] *Secretary.*

EXHIBIT "B".

Docket No. 25992—Agenda 55—December, 1940.

THE CENTRAL ILLINOIS PUBLIC SERVICE COMPANY et al., Appellees,

v.

THE ILLINOIS NATURAL GAS COMPANY, Appellant

Mr. Justice Farthing delivered the opinion of the court:

The Central Illinois Public Service Company filed with the Illinois Commerce Commission a petition for an order requiring the Illinois Natural Gas Company to furnish natural gas to it at wholesale. The gas company's defense was that it was engaged in interstate commerce and was under the exclusive jurisdiction of the Federal Power Commission and, therefore, the Illinois Commerce Commission lacked jurisdiction. The commission held against the gas company and granted the prayer of the petition. On appeal, the circuit court of Coles county affirmed this order and appellant has perfected a further appeal to this court.

The main question is whether the Illinois Natural Gas Company is engaged in interstate or intrastate commerce. The facts are not disputed. The Illinois Natural Gas Company is a wholly-owned subsidiary of the Panhandle Eastern Pipe Line Company, a Delaware corporation, hereafter called the Panhandle company. That company gathers natural gas in Texas and Kansas and transmits it through its high pressure mains through several States, including Illinois. Its main runs in a general east and west direction through Illinois. The Illinois Natural Gas Company, hereafter called the Illinois Natural, owns certain lateral transmission lines and incidental equipment all of which are located in Illinois. Gas is delivered to it at the points where its lateral transmission lines intersect the high pressure main of the Panhandle company. Gas is furnished to the Illinois Natural pursuant to a contract between it and the Panhandle company approved by the Illinois Commerce Commission. When the gas enters the lateral transmission lines of Illinois Natural pressure is reduced for economical transportation and delivery. This company delivers the gas from its lateral lines to local public utility companies, which, in turn, distribute it to the general public. Before delivery to these local utilities the pressure is further reduced.

Appellant argues that although all the property owned by it is located entirely in Illinois and although it sells natural gas only to Illinois utilities, it nevertheless is engaged in interstate commerce and is not subject to the regulations of the Illinois Commerce Commission. In support of this position, it points out that in packing the high pressure transmission line from day to day with natural gas from the sources of supply, Panhandle estimates the quantities of natural gas that will be used by Illinois Natural and other companies purchasing from Panhandle, in Illinois and other States, and each day continuously transports sufficient gas to satisfy the requirements of all of these customers.

Several cases claimed by both sides to be more or less analogous to the one before us have been cited and discussed in the briefs. In East Ohio Gas Co. *v.* Tax Commis-

sion, 283 U. S. 465, 75 L. ed. 117, the East Ohio Gas Company was an Ohio corporation which furnished natural gas to consumers in more than fifty municipalities in that State. It bought part of its gas from outside the State. At the State line the gas went into this company's high pressure transmission lines and these connected with distribution lines where less pressure was maintained. An Ohio statute taxed the gross receipts of corporations engaged in the business of supplying natural gas to consumers within the State. It was held the proceeds from the sale of gas bought outside the State were taxable under the statute and the contention that this was interstate commerce was overruled. The Supreme Court of the United States said: "The transportation of gas from wells outside Ohio by the lines of the producing companies to the State line and thence by means of appellant's high pressure transmission lines to their connection with its local systems is essentially national—not local—in character and is interstate commerce within as well as without that State. The mere fact that the title or the custody of the gas passes while it is en route from State to State is not determinative of the question whether interstate commerce ends." This statement is relied on by appellant. However, the court went on to hold in that case: "But when the gas passes from the distribution lines into the supply mains, it necessarily is relieved of nearly all the pressure put upon it at the stations of the producing companies, its volume thereby is expanded to many times what it was while in the high pressure interstate transmission lines, and it is divided into the many thousand relatively tiny streams that enter the small service lines connecting such mains with the pipes on the consumers' premises. So segregated the gas in such service lines and pipes remains in readiness or moves forward to serve as needed. The treatment and division of the large compressed volume of gas is like the breaking of an original package, after shipment in interstate commerce, in order that its contents may be treated, prepared for sale and sold at retail." It is important to note in considering the instant case that it is not claimed appellant was engaged in intrastate commerce as far as its relations with the Pan-

handle company are concerned. Here, as in the East Ohio Gas Co. case, the claim is made that after the gas is in the lateral lines of Illinois Natural, its pressure reduced and ready for delivery to local utilities, it is no longer in interstate commerce.

In Missouri *v.* Kansas Natural Gas Co. 265 U. S. 298, 68 L. ed. 1027, it was held the transportation of gas through pipe lines from one State to another for sale to distributing companies is interstate commerce. That same proposition is laid down in Public Utilities Com. *v.* Landon, 249 U. S. 236, 63 L. ed. 577. But in that case the court held: "But in no proper sense can it be said under the facts here disclosed, that sale and delivery of gas to their customers at burner tips by the local companies operating under special franchises constituted any part of interstate commerce. The companies received supplies which had moved in such commerce, and then disposed thereof at retail in due course of their own local business." The court also stated that "Interstate commerce is a practical conception and what falls within it must be determined upon consideration of established facts and known commercial methods."

In Public Utilities Com. *v.* Attleboro Steam & Electric Co. 273 U. S. 83, 71 L. ed. 549, a Rhode Island company sold electricity to a Massachusetts firm and made delivery at the State line. It was held this was interstate commerce and the rates could not be regulated by the Rhode Island Public Service Commission. That, clearly, was an attempt to regulate interstate commerce and is not in point here.

In Southern Natural Gas Corp. *v.* Alabama, 301 U. S. 148, 81 L. ed. 970, the question presented was whether the imposition of a franchise tax upon the Southern Natural Gas Corporation was invalid as a direct burden upon interstate commerce. There the Southern company was engaged in the transmission of natural gas from Louisiana and Mississippi to various States. It had contracts for delivery of natural gas to four purchasers in Alabama. Three were intrastate utilities and the fourth a consumer. The gas was delivered in continuous movement from the gas fields without break or interruption to the point of delivery, viz., the meter house at which the gas so sold was measured for the purpose of payment. At this point pressure was re-

duced and the gas measured. The contracts with the utilities contained detailed provisions as to delivery, pressure, measurement, etc. The contract with the Tennessee company (the consumer) also provided the Southern company should maintain service lines to the different plants of the consumer. It was held the sale to this company was intrastate business. The court said there was no essential distinction between the establishment of such a local activity to meet the needs of consumers in industrial plants and the service to consumers in the municipalities which was found in the East Ohio Gas Company case, supra. The court also quoted with approval this language from Missouri *v.* Kansas Natural Gas Co. supra: "The business of supplying, on demand, local consumers is a local business, even though the gas be brought from another State and drawn for distribution directly from interstate mains; and this is so whether the local distribution be made by the transporting company or by independent distributing companies. In such case the local interest is paramount, and the interference with interstate commerce, if any, indirect and of minor importance."

We think clearly the local interest, in the case before us, is paramount and the national interest indirect and of minor importance. No attempt is made to regulate the transmission or delivery while the gas is in the high pressure lines, on its way through the State of Illinois or from a point without to a point within Illinois. No such attempt is made until the gas has left the high pressure lines, its pressure reduced, and delivered to the wholly intrastate lines ready for delivery to local utilities. The question of what local utilities are entitled to be furnished with this gas is primarily one of local concern. Although the quantity of gas to be transmitted from the sources of supply will, of course, depend in part on the amount used in Illinois, that does not render the business of the distributing company in furnishing gas to local companies interstate in character.

In view of our holding that the order of the commission affects only intrastate commerce, the contention that the Natural Gas act (15 U. S. C. A. 717, et seq.) gives the Federal Power Commission exclusive jurisdiction of the

matters involved in this proceeding must be overruled. The provisions of that act plainly show they apply only to interstate commerce, and that the act was not intended to disturb the States in the exercise of their jurisdiction over the sale and distribution of natural gas in intrastate commerce. Thus, section 1 (b) of the act reads, in part: "The provisions of this chapter shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption * * * but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas."

The judgment of the circuit court is affirmed.

Judgment affirmed.

(4515)

No. 100

MAY 22

Supreme Court of the United States

OCTOBER TERM, A. D. 1940.

CENTRAL ILLINOIS PUBLIC SERVICE COMPANY ET AL., APPELLEES,

VS.

ILLINOIS NATURAL GAS COMPANY, APPELLANT.

APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS.

APPELLANT'S BRIEF IN OPPOSITION TO APPELLEES' STATEMENTS MAKING AGAINST JURISDICTION AND IN OPPOSITION TO APPELLEES' MOTIONS TO DISMISS APPEAL OR AFFIRM DECISION OF THE SUPREME COURT OF THE STATE OF ILLINOIS.

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Counsel for Appellant.

Supreme Court of the United States

OCTOBER TERM, A. D. 1940.

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Both Central Illinois Public Service Company and Illinois Commerce Commission, appellees herein, have filed statements of matters which, according to their contentions, militate against the jurisdiction of this court, and in connection therewith each of said appellees has filed a motion to dismiss or, in the alternative, to affirm. Since the motions of both appellees have for a common ground the alleged lack of a substantial federal question, and since both statements present practically the same contentions, all will be treated as one in this brief, except in instances where the text of any of said motions or

statements seems to require specific reference for the sake of clarity and the convenience of this court.

Since the important facts have been related in appellant's jurisdictional statement, they will not be reiterated separately here, except where required by the argument.

At the outset, specific reference must be made to the motion of appellee, Central Illinois Public Service Company, because of the contention, not contained in the motion of Illinois Commerce Commission, to the effect that the federal question relates to a claim of immunity under a statute of the United States, which federal question may be reviewed only by certiorari. We believe this contention to be wholly without merit. In this cause there seasonably and squarely was raised before the state court the validity of an order of the Illinois Commerce Commission and the statute (as applied to appellant) under the supposed authority of which the order was made, on the specific ground that said order and the statute under which the order was made (in so far as the statute purported to authorize said order), and as applied to appellant herein, would interfere with and place a burden upon interstate commerce in contravention of the commerce clause of the Constitution of the United States. Unquestionably, the order of the Illinois Commerce Commission is a statute within the meaning of the Judicial Code, Section 237 (a), as amended. *Live Oak Water Users Assoc.* v. *R. R. Comm.*, 269 U. S. 354, 70 L. Ed. 305. The decision of the Supreme Court of Illinois was in favor of the validity of said order as applied to appellant. This case, then, falls squarely within the provisions of Section 237 (a) and is properly before this court on appeal. *Dahnke-Walker Milling Co.* v. *Bondurant*, 257 U. S. 282, 66 L. Ed. 239.

In addition to the question of the validity of the order of Illinois Commerce Commission because of the repugnancy of the order to the commerce clause of the

Constitution of the United States, there also was duly drawn in question the validity of said order on the ground of conflict with a federal law, the Natural Gas Act (52 Stat. at L. 821-33, U. S. C. A., Tit. 15, Sec. 717-717W) in that the Federal Power Commission had exclusive jurisdiction over appellant and the subject matter of the case under the provisions of the Natural Gas Act and that the Illinois Commerce Commission was therefore without jurisdiction.

In the case of *Alabama and Vicksburg Railway Co.* v. *Jackson & Southern Ry. Co.*, 271 U. S. 244, 70 L. Ed. 928, which bears a close analogy to this case, this court held that the case was properly before it on writ of error and dismissed the petition for certiorari. If, therefore, in the opinion of this court, the question as to the conflict between the order of Illinois Commerce Commission and the Natural Gas Act constitutes a claim of immunity under a federal law which, standing alone, could not be made the basis of an appeal, but only the basis for a petition for certiorari, then this court will consider that question as a matter of course with other questions properly before it on appeal (*Prudential Ins. Company of America* v. *Cheek*, 259 U. S. 530, 66 L. Ed. 1044) or, in any event, arrive at the same result by the application of Section 237 (c) of the Judicial Code. *Lavine* v. *State of California*, 286 U. S. 528, 76 L. Ed. 1270.

We come now to the principal contention of appellees to the effect that principles established by numerous decisions of this court preclude the existence of a substantial federal question in this cause.

While we shall have more to say later with respect to the Natural Gas Act, it is apparent that the principal and primary question here is not one involving a conflict between the Illinois Commerce Commission order and the Natural Gas Act or of an immunity under the federal law claimed by appellant. That question was brought

into focus because Illinois Commerce Commission was attempting to force appellant to construct a pipe line twenty miles in length into a market in which it appeared that natural gas was already being served by another natural gas company, as defined in the Natural Gas Act, and to sell natural gas in said market for resale to the inhabitants of several towns and communities in the very teeth of Section 7 (c) of the Act which specifically forbids such an act by a natural gas company unless it shall first obtain from the Federal Power Commission a certificate of convenience and necessity and Section 7 (a) which confers jurisdiction upon the Federal Power Commission to determine the desirability of an extension of facilities under such circumstances and to order such extension when deemed to be in the public interest. A natural gas company is defined in Section 2, Paragraph 6, of that Act as one "engaged in the transportation of natural gas in interstate commerce, or the sale in interstate commerce of such gas for resale." Therefore, it is obvious that the act applies to appellant if appellant's activities fall within that definition. Consequently, the crux of this entire cause is the question of whether or not appellant is engaged in the transportation or sale for resale of natural gas in interstate commerce. If so, the order of the commission may be, and is, if appellant's contentions are sound, repugnant to the commerce clause by reason of the attempt directly to interfere with and burden such commerce. If appellant is in fact engaged in interstate commerce, then there would seem to be little, if any, room in the authorities for the arrogation by the Illinois Commerce Commission of the sort of regulatory power herein sought to be exercised, nor the usurpation of jurisdiction over appellant, heedless of the Natural Gas Act, regardless of any attempted prior assumption of jurisdiction by that body or of any acquiescence therein by appellant.

Clearly, the nature, extent and potentialities of the type of regulation sought to be imposed upon appellant by means of the order of Illinois Commerce Commission are of such profound scope that it cannot seriously be argued that no substantial federal question is presented here once it is conceded that appellant's activities may be of an interstate character. The decisions of this court are replete with situations wherein interference with, obstruction of, and burden upon, interstate commerce, no more onerous than that attempted in this case, was forbidden. As examples of forms of regulation or interference, which were struck down by this court, are the attempt of a state commission to compel telegraphic stock exchange quotations to be supplied to an individual in the case of *Western Union Tel. Co.* v. *Foster*, 247 U. S. 105, 62 L. Ed. 1006, the attempt of a state tax commission to exact from an interstate pipe line company an annual franchise tax in the case of *Ozark Pipe Line Co.* v. *Monier*, 266 U. S. 555, 69 L. Ed. 439, and the attempt of one railway company to proceed under a state eminent domain statute to acquire a connection with another railway company even when a junction at some point on its system was agreeable to the latter company in the case of *Alabama & Vicksburg R. R. Co.* v. *Jackson & E. R. Co.*, 271 U. S. 244, 70 L. Ed. 928.

Apparently appellees do not contend that the sort of regulation attempted herein would present an unsubstantial federal question if appellant's business were conceded to be in interstate commerce, but their contention is, in short, that appellant is engaged wholly in intrastate commerce.

Appellant earnestly maintains that its business activities constitute interstate commerce, and, following a decision by the Supreme Court of Illinois which appellant respectfully contends utterly failed to distinguish between the fact situation in this case and fact situations in prior decisions of this court giving rise to the application of the

principles relied upon by the state Supreme Court, appellant appealed to this court seeking a determination of the vital question whether its activities constitute interstate commerce, a mixed question of fact and law which this court will determine for itself. *Kansas City Structural Steel Co.* v. *State of Arkansas,* 269 U. S. 148, 70 L. Ed. 204.

Appellant finds no fault with the well-established principles which are relied upon by appellees, and which were relied upon by the Supreme Court of Illinois, but it does contend that those principles have no application whatsoever to the facts now before this court. From the outset of the proceedings before the Illinois Commerce Commission, appellant has relied upon other legal principles, enunciated in the very same cases, which it contends govern this case. It is evident that both the state court and appellees nourish the notion that appellant's activities are identical with those of a distributing utility selling gas under franchise at retail directly to the ultimate domestic consumer. They speak of the reduction in pressure in appellant's lines incidental to economic transportation as if it were identical to the manifold expansion of gas which takes place in the service lines of local distributing utilities in order to place the gas in readiness, at a pressure of but a few ounces, to move forward to the domestic customer's burner tip at his demand by the mere manipulation of his own service facilities, which are under his control.

As an example of the improper analogy drawn by appellees and by the state court, we refer this court to the treatment given by them to the cases of *Public Utilities Comm.* v. *Landon,* 249 U. S. 236, 63 L. Ed. 577, and *East Ohio Gas Company* v. *Tax Comm.,* 283 U. S. 465, 75 L. Ed. 1171. They quote excerpts from those cases to the effect that the delivery of gas at the burner tips, on demand, to customers of local distributing utilities constitutes intrastate commerce and that in such a case the local interest is paramount. They ignore the fact that in both of

those cases as well as in most, if not all, of the other gas cases cited by them, there also existed interstate fact situations, some closely analogous to the facts in this case, to which this court applied other principles of law producing diametrically opposite results. In the Landon case the pipe line company which delivered gas from other states to the local distributing companies was held to be engaged in interstate commerce. This court said:

> "That the transportation of gas through pipe lines from one state to another is interstate commerce may not be doubted. Also it is clear that, as part of such commerce, the receivers might sell and deliver gas so transported to local distributing companies free from unreasonable interference by the state. *American Exp. Co.* v. *Iowa*, 196 U. S. 133, 143, 49 L. Ed. 417, 422, 25 Sup. Ct. Rep. 182; *West* v. *Kansas Natural Gas Co.*, 211 U. S. 229, 55 L. Ed. 716, 35 L. R. A. (N. S.) 1193, 31 Sup. Ct. Rep. 564; *Haskell* v. *Kansas Natural Gas Co.*, 224 U. S. 217, 56 L. Ed. 738, 32 Sup. Ct. Rep. 442,"

and then proceeded to differentiate between the business of the pipe line company and the local distributing companies and, in connection with the activities of the local distributing companies, enunciated the principles so inappositely quoted by appellees in their statements and by the state court in its opinion.

In the East Ohio Gas Company case the gas company, in addition to engaging in the distribution of gas at retail to ultimate domestic consumers, which situation gives rise to the quotations relied on by appellees, was also engaging in the transportation of the gas it received from other companies, at the state line, from that point to its local distribution systems. In these local distribution systems the pressure was reduced to that which was necessary, a few ounces per square inch, to carry the gas to the burner tips of the domestic consumers in usable condition, the use of each consumer being controlled by him. Before holding the distribution to domestic consumers to

be intrastate commerce, which is the part of the decision relied on by appellees and the Illinois Supreme Court, this court said:

> "The transportation of gas from wells outside Ohio by the lines of the producing companies to the state line, and thence by means of appellant's high pressure transmission lines to their connection with its local systems is essentially national—not local—in character and is interstate commerce within as well as without that state. The mere fact that the title or the custody of the gas passes while it is en route from state to state is not determinative of the question where interstate commerce ends. *Public Utilities Commission* v. *Landon*, 249 U. S. 239, 245, 63 L. Ed. 577, 586, P. U. R. 1919C, 834, 39 S. Ct. 268; *Missouri ex rel. Barrett* v. *Kansas Natural Gas Co.*, 265 U. S. 298, 307-309, 68 L. Ed. 1027, 1029, 1030, 44 S. Ct. 544; *Peoples Natural Gas Co.* v. *Public Serv. Comm.*, 270 U. S. 550, 554, 70 L. Ed. 726, 729, 46 S. Ct. 371; *Public Utilities Comm.* v. *Attleboro Steam & Elec. Co.*, 273 U. S. 83, 89, 71 L. Ed. 549, 553, 47 S. Ct. 294."

It will be noted that in the East Ohio Gas Company case the transportation from the state line to the distribution systems, with unimportant exceptions, is closely akin to the activities of appellant. It also will be noted that this court, in further distinguishing the interstate and intrastate activities, alluded to the fact that the furnishing of gas to consumers in Ohio municipalities by means of distribution plants to supply the gas suitably for the service for which it was intended was to be distinguished from the situation first above noted.

Appellees place some reliance upon the case of *Southern Natural Gas Co.* v. *Alabama*, 301 U. S. 148, 81 L. Ed. 970. However, the facts in that case which lead this court to consider part of the activities of the gas company to be intrastate in character certainly are not present in this case. In that case the gas company not only installed the usual meter stations, but established the requisite serv-

ice lines running to the various industrial plants and furnished gas in the manner suited to the consumers' needs. It appears that in effect the gas company had constructed a small distribution system and was serving gas on demand and in such a manner as to serve the needs of the consumers. "The sales to the Tennessee company, and its affiliates, were made from time to time upon orders given by the Birmingham office as the needs of the purchasers required."

But appellees say that all appellant's property is located within the State of Illinois. So were all of the high pressure gas transmission pipe lines of East Ohio Gas Company located in the State of Ohio.

Appellees say that appellant purchases its gas and there is a change in title en route. Such was the fact in the East Ohio Gas Company case and in the case of *Public Utilities Company of Rhode Island* v. *Attleboro Steam & Elec. Co.*, 273 U. S. 83, 71 L. Ed. 549. In the latter case this court held that a state cannot regulate the rates charged by a local electrical corporation for current sold to a foreign corporation for use in another state and delivered at the state boundary. The following is an excerpt from the opinion of this court:

> "It is conceded rightly that the sale of electric current by the Narragansett Company to the Attleboro Company is a transaction in interstate commerce notwithstanding the fact that the current is delivered at the state line. The transmission of electric current from one state to another, like that of gas, is interstate commerce * * * and its essential character is not affected by a passing of custody and title at the state boundary not arresting the continuous transmission to the intended destination."

Appellees stressed the fact that appellant reduced the pressure of the gas upon receiving it from Panhandle Eastern Pipe Line Company. It is difficult to understand what possible effect that could have in principle unless coupled with facts such as exist in connection with the

distribution of gas at retail as in the cases cited by appellees. Obviously, a pipe line company must carry pressures consistent with economic exigencies and appellant would have no reason to carry a pressure in a line supplying Peoria, Illinois, equal to that carried by Panhandle Eastern Pipe Line Company in a line supplying the distributing company in Detroit, Michigan, as well as many other utilities in several states. Surely appellees would not contend that a shipment of goods from Texas to a predetermined customer in Illinois would lose its interstate character merely because it was carried by fast main line rail part of the way and thence by slower branch line to the point of destination.

The record shows that appellant carries pressures in its several lateral lines varying from a low of thirty-eight pounds per sqaure inch in one line to a high of one hundred seventy-three pounds per sqaure inch in another line. The difference in pressures depends upon the size of the load, the distance the gas has to be carried and other operating conditions which affect economical transportation. Deliveries are then made from these several lines to the various distributing companies, at pressures ranging from fifteen pounds per square inch to ninety-one pounds per square inch. The distributing companies must again reduce pressure in order that gas may be distributed "at about six inch pressure or 3.47 ounces."

In *State Tax Comm.* v. *Interstate Natural Gas Co.*, 284 U. S. 41, 76 L. Ed. 156, the gas company which transported gas from sources out of the State of Mississippi and sold gas to distributing companies within that state reduced pressure at the points of delivery within said State of Mississippi. This court, commenting on this circumstance, said:

> "The pressure of the gas is reduced by the plaintiff before it passes into the purchaser's hands. The work done by the plaintiff is done upon the flowing gas to help the delivery and seems to us plainly to be incident to the interstate commerce between

> Louisiana and Mississippi. The plaintiff simply transports the gas and delivers at wholesale, not otherwise worked over than to make it ready for delivery to the independent parties that dispose of it by retail."

The claimed analogy between reduction in pressure and breaking bulk can have no general application. The breaking of bulk has often been alluded to as symbolic of the completion of interstate commerce because ordinarily that marks the reception of the bulk package by the predetermined recipient to whom it has in effect been appropriated from the outset of the interstate journey and the subsequent offering of the contents of the bulk package to undetermined customers at retail in quantities and at times requested.

No such analogy properly can be drawn here. The record discloses the undisputed facts to be that prior to appellant's connecting its lateral lines with the facilities of any of its wholesale customers, Panhandle Eastern Pipe Line Company is advised of the proposed delivery and sale, the date upon which service will be required, the estimated daily demand of the customer involved, and of the various circumstances with respect to the peak demands of such customer; that Panhandle Eastern Pipe Line Company, in packing its transmission line from day to day with natural gas from its sources of supply, estimates the quantities of natural gas which will be required by all of its customers, including appellant, in the various states in which it sells natural gas and, pursuant to such estimates and line-packing activities, it continuously transports the required quantities of gas to fulfill the requirements of all of its wholesale customers; that the quantities of gas necessary to fulfill appellant's requirements are transported continuously by Panhandle Eastern Pipe Line Company from its sources of supply to the various points of delivery where it is delivered to appellant, such deliveries being made without reduction in pressure, and appellant, without breaking the continuity of transportation, carries said gas continuously

through its lateral lines with only such reduction in pressure as is calculated to effectuate the most economical transportation to its wholesale customers; that from day to day the requirements of all of appellant's wholesale customers are estimated in advance to enable Panhandle Eastern Pipe Line Company to deliver to appellant each day the necessary quantities of gas to fulfill the requirements of the distributing companies being supplied by appellant, and that in this manner natural gas which is contracted for by appellant, before the gas leaves the ground at the sources of supply of Panhandle Eastern Pipe Line Company, is appropriated in a practical sense to appellant's various wholesale customers and is carried continuously and at high pressures through the facilities of Panhandle Eastern Pipe Line Company and appellant to its various destinations without unnecessary treatment, without break in transportation, and without storage, intermediate or otherwise. The record shows that this is the daily, normal, contemplated and followed course of effecting transportation and delivery of gas to the wholesale customers of appellant.

Applying long-established principles to these undisputed facts, it seems that appellees' contentions that appellant is engaged in intrastate commerce and that there is presented, therefore, no substantial federal question, are wholly untenable.

Applicable principles are forcibly stated in *Western Union Telegraph Co.* v. *Foster*, 247 U. S. 105, 62 L. Ed. 1006, wherein a state commission sought to regulate interstate telegraphic quotations of the New York Stock Exchange. This court said:

> "* * * It is enough that, in our opinion, the transmission of the quotations did not lose its character of interstate commerce until it was completed in the brokers' offices, and that the interference with it was of a kind not permitted to the states. The supposed analogy that has prevailed is that of a receiver of a package breaking bulk and selling at will in retail trade. But it appears to us misleading.

We also think it unimportant that the contracts between the Exchange and the telegraph companies emphasize the element of *quasi* sale for a lump sum and leave it to the interest of the telegraph companies to find subscribers. Neither that nor the intervention of an operator, or of another company, are in the least degree conclusive. Unlike the case of breaking bulk for subsequently determined retail sales, in these the ultimate recipients are determined before the message starts, and have been accepted as the contemplated recipients by the Exchange. It does not matter if they have no contract with the Exchange, directly. It does not matter that if the telegraph companies did not deliver to any given one the Exchange could not complain. If the normal, contemplated and followed course is a transmission as continuous and rapid as science can make it from Exchange to broker's office, it does not matter what are the stages or how little they are secured by covenant or bond."

* * * * * * *

"It is admitted that the transmission from New York to Massachusetts by the telegraph company was interstate commerce. If so, it continued such until it reached 'the point where the parties originally intended that the movement should finally end' (citing cases)."

A case bearing a close analogy on the facts is that of *Peoples Natural Gas Co.* v. *Public Service Comm.*, 270 U. S. 550, 70 L. Ed. 726. The Peoples Natural Gas Company was incorporated under the laws of Pennsylvania and was engaged in producing, purchasing, transporting by pipe line, and selling natural gas wholly within the State of Pennsylvania. About two-thirds of its gas supply was purchased from a producing company in West Virginia, whose lines connected with those of Peoples Natural Gas Company at the Pennsylvania-West Virginia state line. The gas coming from West Virginia was transported in a continuous stream from the places of production to those of consumption. Speaking of the essential

character of the transportation of the West Virginia gas, the court said:

> "As respects the West Virginia gas, we are of the opinion, in view of its continuous transportation from the places of production in one state to those of consumption in the other and its prompt delivery to purchasers when it reaches the intended destinations, that it must be held to be interstate commerce throughout these transactions. Prior decisions leave no room for discussion on this point and show that the passing of custody or title at the state boundary without arresting its movement to the destinations intended are minor details which do not affect the essential nature of the business" (citing *Western Union Tel. Co.* v. *Foster; Public Utilities Comm.* v. *Landon,* and other cases).

Moreover, it is important to note in passing that while this court held that the Public Service Commission of Pennsylvania had the authority to compel the gas company to continue selling natural gas to the distributing company at Johnstown, Pennsylvania, for resale to domestic consumers in Johnstown, it clearly implied that it would not have done so if it had not been for the circumstance that the local production of gas by the gas company from wells within the State of Pennsylvania appeared to be more than sufficient to meet the requirements of the Johnstown company.

The principle that transportation of natural gas or, for that matter, any other commodity to predetermined recipients thereof, once begun in interstate movement, continues as an interstate transaction until the commodity reaches the destination intended by the parties appears to be so well established, therefore, as to justify appellant in refraining from burdening this court with an exhaustive treatment of numerous other cases enunciating that principle and, accordingly, only the following few of those cases are here cited:

United States v. *Erie R. R. Co.*, 280 U. S. 98, 74 L. Ed. 187;

Carson Pet. Co. v. *Vial*, 279 U. S. 95, 73 L. Ed. 626;

Champlain Realty Co. v. *Brattleboro*, 260 U. S. 366, 67 L. Ed. 309;

Western Oil Refining Co. v. *Lipscomb*, 244 U. S. 346, 61 L. Ed. 1181;

Texas & N. O. R. Co. v. *Sabine Tram Co.*, 227 U. S. 111, 57 L. Ed. 442; and

Coe v. *Errol*, 116 U. S. 517, 29 L. Ed. 715.

It is noteworthy that while in some of the cases above cited, the transportation was not continuous and the exact recipients of the commodities were not determined, this court nevertheless was of the opinion that there was no break, within the meaning of the commerce clause of the Federal Constitution, in the continuity of transportation so long as the normal, repeated and contemplated course of the transportation was such as to mark the commodities as practically appropriated to recipients in a foreign state or country.

It will be of interest here to direct the court's attention to the fact that the record shows that in the State of Missouri Panhandle Eastern Pipe Line Company owns not only the main transmission line but also the various lateral or branch lines which are used to convey gas to the several utility distributing companies to which it transports and sells natural gas in that state, and that the manner of procuring, transporting and delivering natural gas to the Missouri utilities, including reductions in pressure, and all other matters of operation, is identical with that employed by both Panhandle Eastern Pipe Line Company and appellant, its subsidiary, in the State of Illinois. We assume that appellees would not contend that Panhandle Eastern Pipe Line Company's activities in the State of Missouri were intrastate in character and if this assumption is correct, it is clear that appellees must place their sole reliance upon the remaining circumstances of separate ownership of appellant's property

in Illinois, the passing of title of the gas en route and the acquiescence of appellant in the claimed authority of Illinois Commerce Commission, none of which appears to be of the slightest importance if the rule is to be followed that what is interstate commerce is to be determined by practical considerations based upon actual facts and the normal course of business rather than upon technical legal concepts, title and niceties of form.

From reading the statements of appellees, it would seem that the necessary result of applying well-established principles to the facts in this case is sought to be avoided by some covert and undisclosed principle—perhaps of estoppel—predicated upon appellant's actions before the Illinois Commerce Commission. Appellees stressed the fact that appellant has filed rate schedules with Illinois Commerce Commission and has submitted to the claimed and asserted jurisdiction of that body in various instances. This, appellant cannot deny. When the transmission system of Panhandle Eastern Pipe Line Company was constructed, it formed a subsidiary, Panhandle Illinois Pipe Line Company, an Illinois corporation, which took title to the main and lateral lines, compressor stations and other facilities in the State of Illinois, which formed a part of the integrated system of Panhandle Eastern Pipe Line Company. Later, Panhandle Illinois Pipe Line Company transferred the main line and compressor stations to its parent company and the lateral or branch lines to appellant and was then dissolved. Permission of Illinois Commerce Commission to carry out this transaction was requested and given. The record does not disclose the reasons for appellant's submission to the claimed authority of Illinois Commerce Commission. Let it be assumed for the sake of argument that Panhandle Eastern Pipe Line Company believed the law required an Illinois corporation to own the pipe line property in that state or that it was advised, or erroneously believed, that its business in Illinois was

intrastate commerce, or that by submission to the purported authority of Illinois Commerce Commission it might thereby avoid federal regulation. Under any assumption that may be indulged, both Panhandle Eastern Pipe Line Company and appellant would be powerless to alter legal principles or statutes. The record shows that the essentials of interstate commerce were not eliminated and that the character of the transportation and the detailed course of operations were not changed in the least from that existing in other states where Panhandle Eastern Pipe Line Company owned both the main line and the laterals.

At no stage of the proceedings in this case have appellees raised the question of estoppel or any similar question by challenging the right of appellant to deny the asserted jurisdiction of Illinois Commerce Commission or to attack the validity of that commission's order, as applied to appellant, or of the statute, under the supposed authority of which the order was made, when construed to authorize such order. Appellees have not shown that the State of Illinois or the Illinois Commerce Commission has suffered any detriment or change of position or has been prejudiced in any manner whatsoever by reason of appellant's acquiescence in the asserted jurisdiction of Illinois Commerce Commission; nor have they shown, or offered to show, that appellant has secured any benefit or advantage or exercised any right by reason of such acquiescence which it could not otherwise have secured or exercised. As this court said in the case of *Ashwander* v. *Tennessee Valley Authority*, 297 U. S. 288, 80 L. Ed. 688, "Estoppel in equity must rest on substantial grounds of prejudice or change of position, not on technicalities."

Had it not been for the enactment of the Natural Gas Act, it may be that appellant would have been willing to submit indefinitely to the rules, regulations and orders of Illinois Commerce Commission even though

that body had not the slightest jurisdiction as a duly constituted authority, but when Congress enacted the Natural Gas Act, and, by so doing, manifested its intention of occupying the field of interstate transportation or sale for resale of natural gas, appellant had no alternative but to resist the asserted authority of Illinois Commerce Commission to which it formerly had submitted. Appellant is unaware of any rule of law under which it could confer the authority, vested in Congress, upon Illinois Commerce Commission or avoid or frustrate the Congressional delegation of authority to Federal Power Commission by acquiescence in an illegal assumption of jurisdiction by the Illinois Commerce Commission. The law of estoppel is not so potent. If it were, it would be a simple matter for any interstate natural gas company to strip the Federal Power Commission of any authority with respect to the powers delegated to it.

In this connection it is pertinent to repeat here that, although the question of the conflict between the order of the Illinois Commerce Commission and the Natural Gas Act necessarily is secondary, the enactment of that law and the virtually complete occupation of the field of regulation claimed by Illinois Commerce Commission over appellant adds greatly to the substantiality of the federal question upon the point that the order of the Illinois Commerce Commission was unconstitutional and void, as applied to appellant, because of its repugnancy to the commerce clause of the Federal Constitution although that question required no such support, the principal effect being, rather, to inject into the case another federal question of far-reaching importance. Further, if prior to the enactment of the Natural Gas Act it could have been claimed successfully, which appellant denies, that appellant was estopped from denying the jurisdiction of Illinois Commerce Commission, certainly since the enactment of the Natural Gas Act any claim of estoppel, even if properly raised, cannot have any persuasive force.

Appellees indicate that Panhandle Eastern Pipe Line Company has contracted to furnish the requirements of appellant and that appellant has filed rate schedules governing the sale of gas to qualified utilities within certain territories in the State of Illinois. They say that compliance with the order of Illinois Commerce Commission will not visit any harmful effect upon either company. Appellant and Panhandle Eastern Pipe Line Company might conceivably add that they desire to sell all the gas possible in the State of Illinois and that it makes little difference to them whether appellant is regulated by Illinois Commerce Commission or Federal Power Commission, but Federal Power Commission, to which has been delegated the power of regulation with respect to interstate transportation or sale for resale of natural gas, may have considerably different notions with respect to the contracts and dealings between Panhandle Eastern Pipe Line Company and appellant, to the invasion of markets of other natural gas companies by appellant and to the effect of compulsory sales in Illinois upon Panhandle Eastern Pipe Line Company's ability or capacity to meet the requirements of other of its customers in other states under existing contracts.

In *Pennsylvania* v. *West Virginia*, 262 U. S. 553, 67 L. Ed. 1117, there was involved the attempt by the State of West Virginia to give to her citizens a preferred right of purchase of natural gas over consumers in other states. In dealing with the question of interference with interstate commerce, this court said:

> "Of course, in the last analysis, the question is whether the enforced withdrawal for the benefit of local consumers is such an interference with interstate commerce as is forbidden to a state by the Constitution. The question is an important one; for what one state may do others may, and there are ten states from which natural gas is exported for consumption in other states. Besides, what may be done with one natural product may be done with others,

and there are several states in which the earth yields products of great value which are carried into other states and there used. But, notwithstanding the importance of the question, its solution is not difficult. The controlling principles have been settled by many adjudications, some so closely in point that the discussion here may be relatively brief.

"By the Constitution, Article I, Section 8, Clause 3, the power to regulate interstate commerce is expressly committed to Congress and therefore impliedly forbidden to the states. The purpose in this is to protect commercial intercourse from invidious restraints, to prevent interference through conflicting or hostile state laws, and to insure uniformity in regulation. It means that in the matter of interstate commerce we are a single nation—one and the same people. All the states have assented to it, all are alike bound by it, and all are equally protected by it."

* * * * * * *

"Natural gas is a lawful article of commerce and its transmission from one state to another for sale and consumption in the latter is interstate commerce. A state law, whether of the state where the gas is produced or that where it is to be sold, which by its necessary operation prevents, obstructs, or burdens such transmission, is a regulation of interstate commerce—a prohibited interference."

In *Alabama & Vicksburg R. R. Co.* v. *Jackson & E. R. Co.*, 271 U. S. 244, 70 L. Ed. 928, a railroad corporation organized under the laws of the State of Mississippi instituted a proceeding under the state law to secure by eminent domain a connection with the interstate railroad of the Alabama & Vicksburg Railway Company. In holding that the Interstate Commerce Commission had exclusive jurisdiction in the matter, this court said:

"It is true that in this case the state court found that the place selected for the junction was a proper one. But the power to make the determination whether state action will obstruct interstate commerce inheres in the United States as an incident of

its power to regulate such commerce. * * * Congress has vested in the commission the authority to find the facts and thereon to exercise the necessary judgment."

So here, it would seem evident that the determination of the propriety of the extension of facilities and service by appellant into a market area already being served by another natural gas company is for Federal Power Commission, and in this connection it is interesting to note that that commission, in the course of its administrations of the Natural Gas Act, has already construed that act as being applicable to a situation precisely like that in this case, conformably, we believe, with long and well-established principles laid down by this court. In *In re Billings Gas Company*, Docket G-152, 35 (N.S.) P. U. R. 321, the Federal Power Commission holding, and the pertinent facts upon upon which the holding rests, are stated in the following language:

"The Ohio Oil Company produces and gathers natural gas in the State of Wyoming, transports the same from the termini of the gathering lines to the Wyoming-Montana state line and thence sells and delivers gas to Billings Gas Company, which in turn transports the same through a transportation pipe line to Billings, Montana, and to other cities and towns in the state, where it is resold for ultimate public consumption. The flow of natural gas through the interconnected facilities of the Ohio Oil Company and the Billings Gas Company to points of local distribution in Montana is a continuous transportation of natural gas in interstate commerce. Both the Ohio Oil Company and the Billings Gas Company are engaged in such transportation, and therefore come within the definition of natural gas companies in the

Natural Gas Act and are not within the exemption of Section 1 B, *supra.*"

Substitute Panhandle Eastern Pipe Line Company for Ohio Oil Company and appellant for Billings Gas Company, and the analogy is well nigh perfect.

In *Hanley* v. *Kansas City S. R. Co.*, 187 U. S. 617, 47 L. Ed. 333, this court said:

> "No one contends that the regulation could be split up according to the jurisdiction of state or territory over the track, or that both state and territory may regulate the whole rate. There can be but one rate, fixed by one authority, whether that authority be Arkansas or Congress."

So, in the present instance, if it be conceded that appellant is engaged in interstate commerce within the sense of the Natural Gas Act, the order of the Illinois Commerce Commission directing appellant to extend its facilities and service in the manner and to the market covered in the order, if allowed to stand unchallenged, would effecutally emasculate the Natural Gas Act. It often has been stated in decisions of this court that the acts of Congress on the subject of interstate commerce are supreme and exclusive, and that there cannot be any divided authority over such commerce. There does not appear to be any valid reason for a contention that there should be any divided authority in this instance.

Conclusion.

Appellant respectfully submits, therefore, that appellees' statements against jurisdiction of this court and their twin motions to dismiss or affirm are without substantial merit and ought to be denied, and that appellant's appeal, presenting, as it does, questions urgently requiring a decision important, among other things, to the administra-

tion of the Natural Gas Act in connection with which this is believed to be the first case presented to this court, ought to be granted.

Respectfully submitted,

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Supreme Court of the United States

OCTOBER TERM, A. D. 1941.

No. 100.

ILLINOIS NATURAL GAS COMPANY. APPELLANT,

VS.

CENTRAL ILLINOIS PUBLIC SERVICE COMPANY AND ILLINOIS COMMERCE COMMISSION, APPELLEES.

APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS.

BRIEF FOR APPELLANT.

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BRIEF FOR APPELLANT.

OPINION BELOW.

The opinion of the Supreme Court of the State of Illinois is reported in 375 Ill. 634, 32 N. E. 2d 157, under the style of *The Central Illinois Public Service Company et al., Appellees,* v. *The Illinois Natural Gas Company, Appellant.*

JURISDICTION.

Pursuant to Paragraph 1 of Rule 12 of the rules of this Court, a jurisdictional statement was duly filed and presented to the Court below at the time of allowance of appeal, disclosing the grounds on which the jurisdiction of this Court is invoked, the statute which is believed to sustain the jurisdiction of this Court being Section 237, as amended, of the Judicial Code, U. S. C. A., Title 28, Section 344a.

After docketing the case and filing the record with the Clerk of this Court, Appellees filed statements of matters which, according to their contentions, make against the jurisdiction of this Court and at the same time filed their motions to dismiss the appeal herein or in the alternative to affirm the judgment of the Supreme Court of Illinois.

Appellant duly filed its brief in opposition to said statements and motions and on October 13, 1941, this Court ordered that further consideration of the question of jurisdiction and of said motions be postponed to the hearing of the case on its merits.

STATEMENT OF THE CASE.

On May 22, 1939, appellee Central Illinois Public Service Company filed its application (in the nature of a complaint) with Illinois Commerce Commission, alleging that its pipe line from the Illinois-Indiana state line near Paris, Illinois, to and serving Paris, Mattoon, Charleston and Effingham, Illinois, was inadequate to assure dependable service to all of said towns and petitioning Illinois Commerce Commission to require appellant to furnish natural gas to it at or near Mattoon, Illinois (R. 18-21), which town is located at the approximate center of its aforesaid interconnected distribution system, a distance

of about twenty miles from appellant's source of supply (the interstate pipe line system of Panhandle Eastern Pipe Line Company) for all of said appellee's requirements in said group of towns (R. 38).

In its answer (response) to said application, appellant alleged its business to be interstate commerce, recited the enactment of the Natural Gas Act effective June 21, 1938, challenged the jurisdiction of the Illinois Commerce Commission on the ground that appellant's business and operations constituted interstate commerce and that the Federal Power Commission had exclusive jurisdiction over appellant and the subject matter of the proceeding and prayed dismissal of the application of Central Illinois Public Service Company for lack of such jurisdiction (R. 21-25).

Appellant, an Illinois corporation, is a wholly owned subsidiary of Panhandle Eastern Pipe Line Company, a Delaware corporation* (R. 21). Panhandle Eastern Pipe Line Company owns a natural gas transmission system which extends from the Amarillo gas field in the Panhandle area of the State of Texas and from the Hugoton gas field in southwestern Kansas and Oklahoma, through the States of Oklahoma, Kansas, Missouri and Illinois, to a point near Dana, Indiana, adjacent to the Illinois-Indiana state line. It produces and purchases natural gas at said source of supply, transports the same through its main transmission line and through lateral or branch lines extending therefrom to the various points of delivery where said natural gas is delivered to its various customers (R. 21-22, 27) (See Map, R. 66A).

Panhandle Eastern Pipe Line Company sells and delivers natural gas along the route of its main transmis-

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*This statement and several others hereinafter made are based in part upon appellant's answer before Illinois Commerce Commission, which answer was received as evidence in the case, by stipulation, as a part of the testimony of witness Neuner (R. 26).

sion line to gas distributing utilities engaged in distributing natural gas at retail to the public, to a number of large industrial customers and to appellant at the points of connection of appellant's transmission lines with the main transmission line of Panhandle Eastern Pipe Line Company (R. 28).

At Dana, Indiana, Panhandle Eastern Pipe Line Company's main transmission line connects with the natural gas transmission line of Michigan Gas Transmission Corporation, from which point the latter transports natural gas delivered to it at said point for transportation and delivery on behalf of Panhandle Eastern Pipe Line Company to the distributing company in Detroit, Michigan (R. 28).

Appellant owns natural gas transmission lines in the State of Illinois, all of which are connected to the main transmission line of its parent company, Panhandle Eastern Pipe Line Company (R. 27, 66A). Appellant's business consists principally of the purchase of natural gas at the points where its transmission lines connect with the Panhandle Eastern Pipe Line Company's main transmission line and the transportation and delivery of such gas through these lateral transmission lines to gas distributing utilities in the State of Illinois (R. 28). These deliveries are made through town border measuring stations at or near the city limits of the cities where the distributing plants are located (R. 28-29). In addition to making deliveries to distributing utilities, appellant serves four or five industrial customers directly, these customers being located along its Quincy line (R. 29). Appellant purchases its natural gas requirements from Panhandle Eastern Pipe Line Company under a written contract between said companies dated June 30, 1938, under which contract Panhandle Eastern Pipe Line Company is obligated to sell and deliver to appellant all of the natural gas required for appellant's present and future customers (R. 22, 30, 74).

Sales of natural gas by Panhandle Eastern Pipe Line Company are made under contracts executed either in Kansas City, Missouri, or New York. Pressure in that company's main transmission line varies from a discharge pressure at a compressor station of around four hundred fifty pounds per square inch to a suction pressure at the next station of around two hundred twenty five to two hundred fifty pounds per square inch (R. 29).

Prior to the time that either Panhandle Eastern Pipe Line Company or appellant actually commence serving their respective customers, Panhandle Eastern Pipe Line Company has knowledge of the approximate date of first delivery, the estimated daily demands of each customer and the pertinent data regarding the peak loads of each customer. This is necessary in order that Panhandle Eastern Pipe Line Company may provide for sufficient connections in the field and introduce into its main transmission line sufficient quantities of natural gas to serve each of such customers (R. 22, 30).

In packing the main transmission line of Panhandle Eastern Pipe Line Company, its pressure dispatcher, after consulting weather reports and customer estimates, estimates in advance each day the requirements of all of its customers and those of appellant. There is continuous transportation of the quantities of natural gas necessary to fulfill the requirements of all such customers (R. 22, 31).

The natural gas required by the customers of appellant is transported continuously by Panhandle Eastern Pipe Line Company from its sources of supply to the various points of connection between its main transmission line and the lateral transmission lines of appellant where the gas is delivered to appellant at main line pressure (R. 22, 31).

The appellant, without breaking the continuity of transportation, reduces the pressure of the gas as it enters its transmission lines to the extent necessary to effect the

most economical transportation to its customers (R. 22-23, 31, 33). The pressure carried by appellant in its several transmission lines is from a low of thirty eight pounds per square inch in one line to a high of one hundred seventy three pounds per square inch in another line (R. 44, 66). The pressure carried in appellant's several lines depends upon the length and size of the particular line and the market requirements of the customers served therefrom (R. 31).

Deliveries are made by appellant from these lines to the several distributing companies at pressures ranging from fifteen pounds per square inch to ninety one pounds per square inch (R. 44, 66). In no case is gas delivered by appellant at usable pressure. The distributing company or direct industrial customer effects further reduction in pressure (R. 31). The average pressure at which distributing utilities distribute natural gas is 3.47 ounces per square inch (R. 47).

From the sources of supply of Panhandle Eastern Pipe Line Company to the points of delivery of appellant to its customers, the gas is first carried by Panhandle Eastern Pipe Line Company and then by appellant, continuously, without unnecessary treatment, without break in transportation, and without storage, intermediate or otherwise (R. 23, 31). The described manner of effecting transportation and delivery to appellant's customers is the daily normal and contemplated course of operations and, in a practical sense, the required quantities of gas are appropriated to the various customers of appellant from the time the gas leaves the ground until delivery thereof has been effected (R. 23, 31-32).

Appellee Central Illinois Public Service Company, an Illinois corporation, is a gas distributing utility in the State of Illinois, operating under the jurisdiction of the Illinois Commerce Commission and selling natural gas at retail in various cities and communities in the State of Illinois, among which are Paris, Charleston, Mattoon and

Effingham, which towns it serves through an interconnecting distribution system (R. 34, 35, 36). It purchases natural gas for resale in said towns at the Illinois-Indiana state line where its pipe line system connects with the pipe line of Universal Gas Company, which company receives its gas from Kentucky Natural Gas Company. The latter company receives its gas from sources in the State of Kentucky and from the pipe line system of Panhandle Eastern Pipe Line Company (R. 36, 42, 43-44).

The contract between appellee Central Illinois Public Service Company and Universal Gas Company, or its predecessor, had been disapproved by Illinois Commerce Commission and said appellee was purchasing gas from Universal Gas Company on a month to month basis (R. 36, 37-38, 70). Said appellee deemed its pipe line from the Illinois-Indiana state line near Paris, Illinois, to and serving Paris, Mattoon, Charleston and Effingham to be inadequate to assure dependable service to all of said towns, but considered that an adequate supply could be obtained if appellant were required to construct a pipe line from the main transmission line of Panhandle Eastern Pipe Line Company to appellee's distribution system at a point near Mattoon, Illinois, which is located at the approximate center of said distribution system serving said towns (R. 37, 38). Appellant was unwilling to construct a pipe line and render service without first procuring a certificate of convenience and necessity therefor from the Federal Power Commission (R. 39, 64).

Prior to the institution of the proceedings before Illinois Commerce Commission, appellant and its predecessor, Panhandle Illinois Pipe Line Company, which also was a wholly owned subsidiary of Panhandle Eastern Pipe Line Company, had professed to be public utilities under the Illinois Commerce Commission Act, had submitted to the orders, rules and regulations of the Illinois Commerce Commission, and had operated under certificates of convenience and necessity granted by and under

rate schedules approved by and filed with said Commission (R. 23, 34, 88). After the enactment of the Natural Gas Act, appellant had also filed its rate schedules with Federal Power Commission (R. 33).

On November 30, 1939, Illinois Commerce Commission entered its order holding that the operations and business of appellant were intrastate and in no sense interstate in character and directing appellant to make such installations and connections with appellee Central Illinois Public Service Company's distribution system at or near the City of Mattoon, Illinois, as shall be adequate for supplying said appellee with its natural gas requirements in said distribution system (R. 47).

On December 28, 1939, appellant filed its petition for rehearing with Illinois Commerce Commission in which it again challenged the jurisdiction of said Commission, on the ground that appellant's business was interstate in character and therefore subject to the exclusive jurisdiction of Federal Power Commission under the Natural Gas Act, assailed the order of Illinois Commerce Commission and the statute under which it was made as invalid as applied to appellant, on the ground that it interfered with and placed a burden upon interstate commerce in contravention of Article I, Section 8, Clause 3, of the Constitution of the United States and challenged the conclusions of law of Illinois Commerce Commission to the effect that appellant's business constituted intrastate commerce. Said motion for rehearing was denied without written opinion (R. 58-59).

Appeal was perfected by appellant to the Circuit Court of Coles County, Illinois, where review was had on the record made in the proceedings before the Illinois Commerce Commission (R. 59, 68). Said Court, on August 2, 1940, affirmed the order of the Illinois Commerce Commission without written opinion (R. 68).

Appellant duly perfected its appeal from the judgment of the Circuit Court of Coles County, Illinois, to

the Supreme Court of Illinois, where it again urged, among others, the same errors as set forth in its petition for rehearing before the Illinois Commerce Commission (R. 68-69). On February 18, 1941, the Supreme Court of Illinois affirmed the judgment of the Circuit Court of Coles County, holding that the business and operations of appellant constituted intrastate commerce and that therefore the Illinois Commerce Commission had jurisdiction to enter its order of November 30, 1939 (R. 108).

SPECIFICATION OF ASSIGNED ERRORS TO BE URGED.

1. The Supreme Court of the State of Illinois erred in holding and deciding that the assumption of jurisdiction by Illinois Commerce Commission, the order of the Illinois Commerce Commission and the Illinois Commerce Commission Act of June 29, 1921, being Chapter 111 2/3, Illinois Revised Statutes, 1939, and particularly Section 50 thereof, as applied to appellant, and under the supposed authority of which statute said order was made, were valid and constitutional although said order requires appellant to subject itself and its activities to the jurisdiction of Illinois Commerce Commission, to render natural gas service to appellee Central Illinois Public Service Company for its requirements for resale in the cities of Mattoon, Charleston, Paris and Effingham, Illinois, and communities intermediate thereof, and to construct and extend a natural gas pipe line and facilities for a distance of approximately twenty miles for such purposes, because said order and said statute as so construed and applied are unconstitutional and void, in that they are repugnant to the Constitution of the United States and particularly Article I, Section 8, Clause 3, thereof.

2. The Supreme Court of the State of Illinois erred in upholding as valid the assumption of jurisdiction by the Illinois Commerce Commission, the order of the Illinois

Commerce Commission, and the Illinois Commerce Commission Act of June 29, 1921, being Chapter 111 2/3, Illinois Revised Statutes, 1939, and particularly Section 50 thereof, under the purported authority of which said order was made, which, as construed and applied to appellant by said court, subject appellant and its activities to the jurisdiction of the Illinois Commerce Commission and require appellant to extend its natural gas pipe line and facilities for a distance of approximately twenty miles and to render natural gas service for the natural gas requirements of several cities and communities in the State of Illinois, because said order and statute, as so construed and applied to appellant, are illegal and void in that they are repugnant to and in direct conflict with the Natural Gas Act, 52 Stat. at L. 821-33, U. S. C. A., Title 15, Secs. 717-717w.

3. The Supreme Court of Illinois erred in deciding and holding that the activities of appellant in transporting, selling, and delivering natural gas in the State of Illinois constitute intrastate commerce rather than interstate commerce and that said order of the Illinois Commerce Commission, as applied to appellant and its activities, is not repugnant to Article I, Section 8, Clause 3, of the Constitution of the United States of America or to the Natural Gas Act, 52 Stat. at L. 821-33, Title 15, U. S. C. A. Secs. 717-717w.

SUMMARY OF ARGUMENT.

I.

Appellant contends that the order of Illinois Commerce Commission which directed appellant to construct and extend natural gas transmission facilities a distance of approximately twenty miles and to sell and deliver to Central Illinois Public Service Company natural gas for resale in several cities and communities in Illinois,

and the statute under which said order was made, are unconstitutional and void as applied to appellant for several reasons, all of which stem from appellant's assertion that its business and activities in the State of Illinois constitute interstate commerce. The soundness of appellant's various reasons for the invalidity of this order depends upon a determination by this Court that its business and activities are interstate in character.

Appellant asserts that its transmission and delivery of natural gas at wholesale to gas distributing utilities and to a few large industries in Illinois constitute interstate commerce in that the natural gas which is delivered daily to such customers, from the time it leaves the Texas and Kansas sources of supply of appellant's parent company, Panhandle Eastern Pipe Line Company (to the main gas transmission line of which company appellant's Illinois transmission lines connect and from which its supply of gas is obtained) until the time it is delivered to appellant's wholesale customers, is in the course of continuous high pressure transportation and, in the normal contemplated course of business of appellant and Panhandle Eastern Pipe Line Company, is in practical effect appropriated to such customers.

Appellant contends that by reason of the interstate character of its business, the order of Illinois Commerce Commission is void because:

II.

The Illinois Commerce Commission Act, the provisions of which govern the functions of Illinois Commerce Commission, expressly denies to that Commission any jurisdiction or authority to make and enter the order herein complained of in that the Act expressly exempts interstate commerce from the scope or field of its application. Under these circumstances it seems obvious that the exercise by Illinois Commerce Commission of unconferred regulatory powers with respect to the busi-

ness of appellant and the prior submission thereto by appellant and its predecessor, Panhandle Illinois Pipe Line Company, were due to a mutual misconception of the legal nature of the business activities of those companies, but irrespective of whether the order and such prior submission to regulation arose from mutual mistake or otherwise, jurisdiction of the interstate subject matter could have been conferred upon Illinois Commerce Commission only through valid legislative enactment. That which was essentially interstate commerce could not be changed to intrastate commerce by mere prior submission to an unlawful assertion of jurisdiction and authority.

III.

The order violates the Commerce Clause of the Constitution of the United States because it imposes and constitutes a direct, forbidden and proscribed burden upon and interference with interstate commerce.

If the Illinois Commerce Commission can order appellant to construct and extend facilities some twenty miles and to supply appellee, Central Illinois Public Service Company, with natural gas, then it could do so as to other localities and in favor of other distributing companies, thereby impairing the ability of both appellant and appellant's parent company, Panhandle Eastern Pipe Line Company, to meet their respective preexisting contractual obligations to sell and deliver natural gas, a commodity produced only in nature and limited in quantity, to other distributing companies supplied by appellant or its parent company.

The transportation and delivery of natural gas to appellant's customers constitutes an unbroken chain fundamentally interstate from beginning to end and the paramount interest is not local, but national, admitting of and requiring national uniform regulation, which is necessary to preserve equality of treatment among the several communities and states which might be affected.

IV.

The order of Illinois Commerce Commission is repugnant to and in direct conflict with an Act of Congress, the Natural Gas Act, under which the Congress of the United States vested in Federal Power Commission the regulatory powers which Illinois Commerce Commission has attempted to arrogate unto itself.

Appellant asserts that even if it were conceded that the order of the Illinois Commerce Commission is of such a nature and character that it might, with propriety, have been made prior to any national legislation upon the subject of interstate transportation and sale of natural gas, nevertheless such order is, by virtue of the enactment of the Natural Gas Act, rendered unconstitutional and void, whether such Act is regarded as a complete scheme of regulation, admitting of no conflicting, interfering, curtailing or complementing state regulations whatever or whether such Act be regarded as only a partial occupation of the field of regulation of interstate transportation and sale of natural gas.

ARGUMENT.

I.

Appellant Is Engaged in Interstate Commerce.

The Supreme Court of Illinois held, upon undisputed facts, that appellant was engaged in intrastate commerce; that the order of the Illinois Commerce Commission affected only intrastate commerce and that the local interest was paramount and the national interest indirect and of minor importance (R. 108).

What constitutes interstate commerce remains a mixed question of law and fact for the determination of this Court.* *Kansas City Structural Steel Co.* v. *State of Arkansas*, 269 U. S. 150, 70 L. Ed. 204. Appellant contends that the uncontroverted facts established in the hearing before the Illinois Commerce Commission conclusively demonstrate the interstate character of appellant's business.

The decision of the State Supreme Court discloses that the Court appeared to nourish the notion that appellant's activities in the State of Illinois are identical with those of a purely local distributing company selling gas at retail under franchise directly to the ultimate domestic consumer. The decision speaks of the treatment and division of the large compressed volume of gas as if the reduction of pressure incidental to the economical transportation in appellant's lines was identical to the manifold expansion of gas which takes place in the local service lines of a local distributing company delivering gas to its customers at the burner tips under pressures varying

*Wherever the expression "this Court" is used, it is intended thereby to refer to the Supreme Court of the United States.

from three to four ounces. The decision strives to differentiate the character of appellant's business from that of companies carrying greater pressures in their transmission lines by professing to see a similarity in the pressures maintained by appellant in its lines to those trifling and nearly static pressures maintained by local distributing companies engaged in the direct delivery of gas at the burner tip of the ultimate domestic consumer. The analogy drawn by the Court is not substantiated by the undisputed facts, and by reason of the improper analogy drawn by the Court, appellant asserts that it has improperly applied principles of law heretofore enunciated by this Court to a state of facts utterly different from the facts within the contemplation of this Court at the times the principles were first laid down.

Appellant contends that none of the cases relied upon by the State Court in arriving at its conclusion that appellant was engaged solely in intrastate commerce will, on the facts involved in any one of them, justify the Court's conclusion that appellant's activities are in harmony with the particular activities characterized by this Court in those cases as intrastate in character. Appellant, in fact, places great reliance for support of its own contentions upon most of the very cases relied upon by the State Court.

Properly applying the decisions relied upon by the State Court to the undisputed facts as to appellant's activities in Illinois, it is evident that the conclusion drawn by the State Court is erroneous, and the interstate character of appellant's business is at once apparent. The precedents relied upon by the State Court obviously do not justify the State Court's conclusion for the reason that the principles of law set forth and the factual situations present in those precedents regarded by the State Court as such persuasive authorities in favor of the sustention of the Illinois Commerce Commission's authority in the premises, far from supporting such conclusion, rather require a diametrically opposite one.

A comparison of the facts in the case of *Peoples Natural Gas Co.* v. *Public Service Comm.*, 270 U. S. 552, 70 L. Ed. 726, with those in the present case reveals a striking, if not complete, similarity between the character of appellant's business and that of the Peoples Company. The Peoples Natural Gas Company was incorporated under the laws of Pennsylvania and was engaged in producing, purchasing, transporting by pipe line and selling natural gas. About two-thirds of its gas supply, which it transported and sold, was purchased from a producing company in West Virginia, the pipe lines of the producing company being laid from the producing company's wells in West Virginia to the boundary line between Pennsylvania and West Virginia, at which point the producing company's lines connected with the pipe line transmission system of the Peoples Company, which transmission lines in turn ran to Pittsburgh, Johnstown and other Pennsylvania cities and boroughs, to which the Peoples Company sold gas. The gas coming from West Virginia was transported in a continuous stream from the places of production in West Virginia to those of consumption in Pennsylvania. At the state boundary between Pennsylvania and West Virginia, at the point at which the respective transmission lines of the Peoples Company and the West Virginia producing company connected, the gas passed through a large meter and that point of connection was treated as the point of delivery for all gas delivered by the West Virginia producing company to the Peoples Company. At Johnstown, Pennsylvania, the Peoples Company sold gas to an independent company having a local franchise for the distribution and sale at retail of natural gas to ultimate domestic consumers in Johnstown. The gas sold and delivered by the Peoples Company to the Johnstown Company for resale by the latter to the ultimate domestic consumer in Johnstown was sold under a contract under which the Peoples Company reserved a right of termination, which right the Peoples Company sought to exercise. The Public Service Commission of

the State of Pennsylvania, upon application by the Johnstown Company ordered the Peoples Company to continue supplying natural gas to the Johnstown Company for resale to consumers in that city, irrespective of the reserved privilege of termination contained in the aforementioned contract. Upon a challenge of the order's validity, this Court said:

> "As respects the West Virginia gas, we are of the opinion, in view of its continuous transportation from the places of production in one state to those of consumption in the other, and its prompt delivery to purchasers when it reaches the intended destinations, that it must be held to be in interstate commerce throughout these transactions. Prior decisions leave no room for discussion on this point and show that the passing of custody and title at the state boundary without arresting the movement to the destinations intended are minor details which do not affect the essential nature of the business. *Western U. Teleg. Co.* v. *Foster*, 247 U. S. 105, 112, 113, 62 L. Ed. 1006, 1015, 1016, 1 A. L. R. 1278, P. U. R. 1918D, 865, 38 Sup. Ct. Rep. 438; *Public Utilities Commission* v. *Landon*, 249 U. S. 236, 245, 63 L. Ed. 577, 586, P. U. R. 1919C, 834, 39 Sup. Ct. Rep. 268; *Pennsylvania Gas Co.* v. *Public Serv. Commission*, 252 U. S. 23, 28, 64 L. Ed. 434, 441, P. U. R. 1920E, 18, 40 Sup. Ct. Rep. 279; *United Fuel Gas Co.* v. *Hallanan*, 257 U. S. 277, 280, 281, 66 L. Ed. 234, 238, 239, 42 Sup. Ct. Rep. 105; *Pennsylvania* v. *West Virginia*, 262 U. S. 553, 67 L. Ed. 1117, 32 A. L. R. 300, 43 Sup. Ct. Rep. 658; *Binderup* v. *Pathe Exch.*, 263 U. S. 291, 309, 68 L. Ed. 308, 316, 44 Sup. Ct. Rep. 96; *Missouri ex rel. Barrett* v. *Kansas Natural Gas Co.*, 265 U. S. 298, 68 L. Ed. 1027, 44 Sup. Ct. Rep. 544; *Ohio Railroad Commission* v. *Worthington*, 225 U. S. 101, 56 L. Ed. 1004, 32 Sup. Ct. Rep. 653; *Lemke* v. *Farmers Grain Co.*, 258 U. S. 50, 66 L. Ed. 458, 42 Sup. Ct. Rep. 244; *Shafer* v. *Farmers Grain Co.*, 268 U. S. 189, 69 L. Ed. 909, 45 Sup. Ct. Rep. 481."

The State Court's decision placed much emphasis upon the case of *East Ohio Gas Company* v. *Tax Commis-*

sion, 283 U. S. 465, 75 L. Ed. 1171. Appellant likewise enlists the support of the decision of this Court in the East Ohio Gas Company case. That part of the business of the East Ohio Gas Company which was held by this Court to be intrastate commerce is analogous only, however, to that engaged in by the independent local distributing companies to which appellant sells gas in wholesale quantities for resale in the respective communities being served by such local distributing companies. That part of the business of the East Ohio Company, which was held by this Court to constitute interstate commerce, is analogous to the business transacted by appellant. The transportation of gas from the state boundary by the East Ohio Gas Company, at which point the gas transmission lines of the East Ohio Gas Company connected with those of an out-state producing company, to the point of connection with the East Ohio Gas Company's local distribution systems, may very aptly be compared with appellant's transportation of gas from the point of connection between appellant's transmission lines in the State of Illinois with the admittedly interstate transmission line of appellant's parent company, Panhandle Eastern Pipe Line Company, to the local distributing companies to which appellant sells gas in wholesale quantities for resale to the ultimate domestic consumer in the communities served by the local distributing companies. Of such transportation, this Court said in the East Ohio case:

> "The transportation of gas from wells outside Ohio by the lines of the producing companies to the state line and thence by means of appellant's high pressure transmission lines to their connection with its local systems is essentially national—not local—in character and is interstate commerce within as well as without that state. The mere fact that title or the custody of the gas passes while it is en route from state to state is not determinative of the question where interstate commerce ends."

The decision of the State Court disregarded the more obvious analogy to be drawn from the East Ohio Gas

Company case and fixed rather upon that part of the East Ohio Gas Company's business which consisted purely of local distribution systems as best exemplifying the character of appellant's activities. That part of this Court's decision, which most appealed to the State Court, read:

> "But when the gas passes from the distribution lines into the supply mains, it necessarily is relieved of nearly all the pressure put upon it at the stations of the producing companies, its volume thereby is expanded to many times what it was while in the high pressure interstate transmission lines, and it is divided into the many thousand relatively tiny streams that enter the small service lines connecting such mains with the pipes on the consumer's premises. So segregated, the gas in such service lines and pipes remains in readiness or moves onward to serve as needed. The treatment and division of the large compressed volume of gas is like the breaking of an original package after shipment in interstate commerce in order that its contents may be treated, prepared for sale and sold at retail."

The language so approvingly cited by the State Court is wholly inapropos so far as appellant's business is concerned. For example, appellant does not "relieve nearly all the pressure put upon" the gas; the volume of the gas in appellant's pipe lines is not "expanded to many times" what it was in the line of Panhandle Eastern Pipe Line Company; the gas is not divided in appellant's pipe lines into "many thousand relatively tiny streams"; the gas in appellant's pipe lines does not "remain in readiness or move forward to serve as needed" (R. 29, 31, 44, 66). All these things may very appropriately be said of the gas once it has been delivered by appellant to the independent local gas distributing companies operating under franchises and engaged in distributing gas at retail at the burner tip directly to the domestic consumer. The effort of the State Court to assimilate appellant's business activities to that part of the business carried on by East Ohio Gas Company after delivery of the gas into its local supply mains merits serious challenge.

The State Court's decision concedes that both *Missouri* v. *Kansas Natural Gas Co.*, 265 U. S. 298, 68 L. Ed. 1027, and *Public Utilities Commission* v. *Landon*, 249 U. S. 236, 63 L. Ed. 577, sustain the proposition that the transportation of gas through pipe lines from one state to another for sale to distributing companies is interstate commerce, but illogically concludes that appellant's business is, nevertheless, intrastate because the sale and delivery of gas to the ultimate domestic consumers at the burner tips by local companies operating under special franchise was held by this Court in those cases to be intrastate. Appellant does not quarrel with this Court's decision in either of the aforementioned cases, but appellant does take exception to the applicability to appellant's activities of the language quoted from these two cases by the State Court as establishing that the appellant is engaged in interstate commerce. The whole opinion of the State Court appears to have been bottomed upon a false premise—that appellant's business and that of a purely local distributing company operating in a community under special franchise and selling gas at retail at the burner tip to the ultimate consumer are one and the same, and that, therefore, any decision of this Court declaring such purely local distribution to be intrastate in character is authority for the conclusion that appellant's business is likewise intrastate in character—in utter disregard of a complete dissimilarity between appellant's activities and those of a purely local distributing company.

With respect to the transportation of gas by a pipe line company which delivered gas from other states to local distributing companies within the State of Kansas, this Court said, in *Public Utilities Commission* v. *Landon*, 249 U. S. 236, 63 L. Ed. 577:

> "That the transportation of gas through pipe lines from one state to another is interstate commerce may not be doubted. Also, it is clear that, as part of such commerce, the receivers might sell

and deliver gas so transported to local distributing companies free from unreasonable interference by the state. *American Exp. Co.* v. *Iowa,* 196 U. S. 133, 143, 49 L. Ed. 417, 422, 25 Sup. Ct. Rep. 182; *West* v. *Kansas Natural Gas Co.*, 221 U. S. 229, 55 L. Ed. 716, 35 L. R. A. (N. S.) 1193, 31 Sup. Ct. Rep. 564; *Haskell* v. *Kansas Natural Gas Co.*, 224 U. S. 217, 56 L. Ed. 738, 32 Sup. Ct. Rep. 442."

In *Southern Natural Gas Co.* v. *Alabama,* 301 U. S. 148, 81 L. Ed. 970, also relied upon by appellees and the State Court, this Court held that the sale of natural gas transported by the Southern Natural Gas Company from the State of Louisiana to an industrial customer in Alabama constituted intrastate commerce. The facts with respect to the sale and delivery of gas to the industrial customer were peculiar and distinct from those in any other reported decision, in that the Southern Natural Gas Company had contracted with the industrial customer to maintain service lines in the customer's plants in order that the gas might be furnished in a manner suited to the consumers' needs, and was serving gas in that manner on orders received from time to time. This Court, in arriving at the conclusion that the sale and delivery of gas to the industrial customer by the Southern Natural Gas Company was intrastate in character, placed much emphasis upon the circumstance that the Southern Natural Gas Company did not simply install metering stations for measuring the amount of the gas delivered, but established service lines running to certain plants of the customer. By reason of the installation of the several service lines serving and connecting the different plants, and by reason of the treatment of the gas and the manner of service thereof this Court held that the Southern Natural Gas Company had effectively established a local activity analogous to the service to ultimate domestic consumers in the East Ohio Gas Company case. The facts are thus clearly distinguishable from those in this case. The applicability to appellant of the principles enunciated

by this Court in the case of *Missouri* v. *Kansas Natural Gas Company* and other similar cases expressly reapproved by this Court in the Southern Natural Gas Company decision, remains unaffected. No contention appears to have been made that the Southern Natural Gas Company was engaged in intrastate commerce insofar as the sales to three local distributing companies were concerned.

A fairly recent decision of the United States Circuit Court of Appeals for the Eighth Circuit presents a partial parallel to the situation of appellant. In *National Labor Relations Board* v. *Central Missouri Telephone Company*, 115 F. 2d 563, the defendant (Respondent on appeal) assailed the jurisdiction of the National Labor Relations Board, contending that it was engaged solely in intrastate business. The facts appear with sufficient clarity in the opinion to make a repetition of them unnecessary. The Appellate Court said:

> "Respondent urged that it was in itself an intrastate carrier and that the activities were not, therefore, subject to the regulatory power of the Federal Government. Stated otherwise, the argument is that a local telephone company engaged mainly in the transmission of intrastate communication over lines lying wholly within the limits of one state cannot be held to be an instrument of interstate commerce by the mere fact that it effects the transmission of interstate messages to and from points served by it by connecting its lines to those of an interstate carrier. * * * These contentions clearly appear to have been foreclosed to respondent by decisions of the Supreme Court and by at least one decision of this Court."

The Court in the Central Missouri Telephone case then proceeded to cite numerous decisions of this Court upholding the application of the National Labor Relations Act in similar situations. Great emphasis was placed, too, upon the language of this Court in *The Daniel Ball*, 77 U. S. 557, 19 L. Ed. 999, wherein this Court said:

> "So far as she was employed in the transportation of goods destined for other states or goods brought from without the limits of Michigan and destined to go places within that state, she was engaged in commerce between the states and however limited that commerce may have been, she was, so far as it went, subject to the regulation of Congress. She was employed as an instrument of that commerce; for whenever a commodity has begun to move as an article of trade from one state to another, commerce in that commodity between the states has commenced. The fact that several different and independent agencies are employed in transporting the commodity, some acting in one state and some acting through two or more states, does in no respect affect the character of the transaction. To the extent to which each agency acts in that transportation, it is subject to the regulation of Congress."

The principles governing the determination of the character of appellant's business, whether interstate or intrastate, have, of course, often been iterated and reiterated. The application of accepted principles is the crux of the problem. The primary features distinguishing the appellant's activities in Illinois in the matter of transportation and sale of natural gas from those of companies engaged directly in the transportation of natural gas across state lines are those of change of custody, change of title and the circumstance that appellant's role in the transportation of gas from the Texas and Kansas gas fields is limited to the transportation and delivery of such natural gas within the State of Illinois. The ultimate wholesale customer to which appellant transports and delivers natural gas is, however, within the contemplation of both appellant and its parent company, Panhandle Eastern Pipe Line Company, at the time the transmission lines of the parent company are "packed" at the gas fields with the daily requirements of all of appellant's customers, as well as all of Panhandle Eastern Pipe Line Company's customers, for the long trip north and east, the continuity of which is never interrupted,

discontinued or broken in any sense (R. 22-23, 30, 31) which would cause a cubic foot of the gas in the pipe lines of the appellant in Illinois to be any less in interstate commerce than the same cubic foot as it swirled through the main line of Panhandle Eastern Pipe Line Company and the connecting line of Michigan Gas Transmission Corporation anywhere between the Panhandle of Texas and the City of Detroit, Michigan.

In *United States* v. *Erie R. R. Co.*, 280 U. S. 98, 74 L. Ed. 187, wood pulp was shipped from Europe by a foreign mill to a broker in Hoboken, New Jersey, who had placed an order for the pulp with the foreign mill on behalf of a company at Garfield, New Jersey; the bales of pulp ultimately to be delivered to the Garfield Company constituted only a small part of the entire shipment of pulp to Hoboken. The contract for the pulp was made directly between the Garfield company and the Hoboken broker; no foreign mill was mentioned in the contract, although the mill was advised of the prospective customer's name at the time the broker submitted the order secured from the Garfield company. The foreign mill shipped directly to the broker, who, it appears, paid the mill as soon as he was advised of the shipment. The question involved was the proper rate to apply to the carriage from Hoboken to Garfield all within the state of New Jersey. The carrier contended that the foreign shipment was distinct from the subsequent shipment by the broker from Hoboken to Garfield of the smaller quantity, that the carriage from Hoboken to Garfield was made under a new and local bill of lading, that the title to the pulp did not pass to the company until the broker arranged at the Hoboken dock for shipment of the specific load to Garfield, and that, therefore, the rail movement from Hoboken to Garfield was an independent intrastate transaction. To this contention, this Court replied:

> "But the nature of the shipment is not dependent upon the question when or to whom the title

passes. *Pennsylvania R. R. Co.* v. *Clark Bros. Coal Mining Co.*, 238 U. S. 456, 59 L. Ed. 1406. It is determined by the essential character of the commerce. *Baltimore & O. S. W. R. Co.* v. *Settle*, 260 U. S. 166, 67 L. Ed. 189. It is not affected by the fact that the transaction is initiated or completed under a local bill of lading which is wholly intrastate (citing numerous cases), or by the fact that there may be a detention before or after the shipment on the local bill of lading (*Carson Pet. Co.* v. *Vial*, 279 U. S. 95, 73 L. Ed. 626). The findings of the Commission that the broker acts only as agent and that from the time that the pulp is put aboard the steamer, there is continued intent that it should be transported to Garfield ought to have been accepted by the District Court as conclusive since there was ample evidence to sustain it. * * * The rail transportation is in fact a part of the foreign commerce."

As in the Erie Railroad Company case, Panhandle Eastern Pipe Line Company, as the original transporter of natural gas, intends and has within its contemplation transportation to the final local destination—whether it be the independent local distributing companies in Illinois purchasing gas from appellant for resale to the ultimate consumers or whether it be the independent local distributing companies purchasing directly from Panhandle Eastern Pipe Line Company. The Illinois carriage of the gas by the appellant constitutes an integral and essential part of the whole interstate transportation thereof from the Texas and Kansas gas fields (R. 22-23, 30, 31).

The converse of the situation, insofar as the point of origin of the commodity is concerned, is exemplified by the case of *United States* v. *Rock Royal Co-operative*, 307 U. S. 533, 83 L. Ed. 1446, wherein sales of milk were made by farmers to local dairies where products were bought for use beyond the state in which the sale and purchase of milk was made. In disposing of the argument that the sale of milk by the farmers to the dairies was a purely

local transaction, fully completed before any interstate commerce began, the Court said:

> "The challenge is to the regulation 'of the price to be paid upon the sale by a dairy farmer who delivers his milk to some country plant.' It is urged that the sale, a local transaction, is fully completed before any interstate commerce begins and that the attempt to fix the price or other elements violates the Tenth Amendment. But where commodities are bought for use beyond state lines, the sale is a part of interstate commerce. We have likewise held that where sales for interstate transportation were commingled with intrastate transactions, the existence of the local activity did not interfere with the Federal Power to regulate inspection of the whole. Activities conducted within state lines do not by this fact alone escape the sweep of the Commerce Clause."

Illustrating the same principle, but going even beyond the Erie Railroad Company case on the facts, is the case of *Carson Petroleum Co.* v. *Vial*, 279 U. S. 99, 73 L. Ed. 626, in which oil shipped in interstate commerce to large storage tanks at St. Rose, Louisiana, was held and stored for ultimate export until a ship arrived or until a sufficient quantity of oil was accumulated to make up a cargo. While the shipper always had orders on hand in excess of the quantity of oil at St. Rose, the oil in the storage tanks was not segregated or assigned or destined to any particular cargo or shipment abroad. The Court in characterizing the stored oil as oil in interstate commerce under the circumstances said, quoting approvingly from *Western Oil Ref. Co.* v. *Lipscomb*, 244 U. S. 346, 61 L. Ed. 1181:

> "Ordinarily the question whether particular commerce is interstate or intrastate is determined by what is actually done and not by any mere billing or plurality of carriers and where commodities are in fact destined from one state to another, a rebilling or reshipment en route does not of itself break the continuity of the movement or require that any part be classified differently from the remainder."

Unlike the Carson Petroleum Company, the appellant does not even temporarily store any of the gas it receives from the interstate pipe line of its parent company, Panhandle Eastern Pipe Line Company (R. 23). All gas sold and delivered by appellant moves in a continuous and unbroken flow from the Texas and Kansas gas fields through the pipe lines of Panhandle Eastern Pipe Line Company and those of appellant to the independent local distributing companies (R. 31) operating under franchises in various cities and towns throughout Illinois wherein the gas purchased from appellant is resold at retail to the ultimate domestic consumer (R. 28-29). Appellant carries natural gas through its transmission lines at pressures varying from thirty-eight pounds per square inch as a minimum to one hundred seventy-three pounds per square inch as a maximum (R. 44-45, 66). For purposes of delivery, these pressures are further reduced by appellant at the moment of such delivery of the natural gas to the local distributing company or to the industrial customer, as the case may be (R. 31, 44-45, 66). While reduction of pressure may, with propriety, be considered as one of the many factors upon which the characterization of transportation of natural gas as interstate or intrastate may turn, in all of the cases where a reduction of pressure has been treated as a decisive factor, the sort and extent of reduction of pressure referred to therein was that found only in the gas mains of purely local utility companies selling gas at retail to the ultimate consumer. Illustrative of this Court's view of the degree of importance to be attributed to a mere reduction of pressure is its decision in the case of *State Tax Commission* v. *Interstate Gas Company*, 284 U. S. 41, 76 L. Ed. 156, in which it said:

> "Distributing companies tap the plaintiff's pipes near Natchez and the town of Woodville. The gas withdrawn by the distributors is measured by a thermometer and by a meter furnished by plaintiff, which is the only way in which it can be measured. The

> pressure of the gas is reduced by plaintiff before it passes into the purchaser's hands. The work done by plaintiff is done upon the flowing gas to help the delivery and seems to us plainly to be incident to the interstate commerce between Louisiana and Mississippi. The plaintiff simply transports the gas and delivers at wholesale, not otherwise worked over than to make it ready for delivery to the independent parties that dispose of it by retail."

The State Court, in its opinion, professed to see no relevancy in the decision of this Court in *Public Utilities Commission* v. *Attleboro Steam & Elec. Co.*, 273 U. S. 83, 71 L. Ed. 549, wherein a Rhode Island company sold electricity to a Massachusetts firm and made delivery at the state line, as to which transaction this Court said:

> "It is conceded rightly that the sale of electric current by the Narragansett Company to the Attleboro Company is a transaction in interstate commerce notwithstanding the fact that the current is delivered at the state line. The transmission of electric current from one state to another, like that of gas, is interstate commerce * * * and its essential character is not affected by a passing of custody and title at the state boundary not arresting the continuous transmission to the intended destination."

On principle the Attleboro case would appear to be indistinguishable from the present case and would seem to require a conclusion quite opposed to that of the State Court.

The decision of this Court in *Western Union Telegraph Co.* v. *Foster*, 247 U. S. 105, 62 L. Ed. 1006, appears particularly apropos as applied to the relevant facts in the present case. In that case a State Commission sought to regulate interstate telegraph quotations of the New York Stock Exchange by compelling the Telegraph Company to furnish to one broker the service being furnished to others. This Court said:

"* * * It is enough that, in our opinion, the transmission of the quotations did not lose its character of interstate commerce until it was completed in the brokers' offices, and that the interference with it was of a kind not permitted to the states. The supposed analogy that has prevailed is that of a receiver of a package breaking bulk and selling at will in retail trade. But it appears to us misleading. We also think it unimportant that the contracts between the Exchange and the telegraph companies emphasize the element of *quasi* sale for a lump sum and leave it to the interest of the telegraph companies to find subscribers. Neither that nor the intervention of an operator, or of another company, are in the least degree conclusive. Unlike the case of breaking bulk for subsequently determined retail sales, in these the ultimate recipients are determined before the message starts, and have been accepted as the contemplated recipients by the Exchange. It does not matter if they have no contract with the Exchange, directly. It does not matter that if the telegraph companies did not deliver to any given one the Exchange could not complain. If the normal, contemplated and followed course is a transmission as continuous and rapid as science can make it from Exchange to broker's office, it does not matter what are the stages or how little they are secured by covenant or bond."

* * * * * * *

"It is admitted that the transmission from New York to Massachusetts by the telegraph company was interstate commerce. If so, it continued such until it reached 'the point where the parties originally intended that the movement should finally end.' "

The Federal Power Commission, under and pursuant to the Natural Gas Act, has asserted jurisdiction over and control of the activities of appellant upon the theory that appellant is engaged in the transportation of natural gas in interstate commerce and the selling of natural gas in interstate commerce for resale, within the meaning of the federal Act (R. 33, 67). In *In re Billings Gas Company*, 35 P. U. R. (N. S.) 321, the Federal Power Commission held, upon a state of facts practically identical

with those in the present case, that the Billings Gas Company, although confining its entire business within the boundary of one single state, as in the case of appellant, was engaged in interstate commerce. The Commission said:

> "The Ohio Oil Company produces and gathers natural gas in the State of Wyoming, transports the same from the termini of the gathering lines to the Wyoming-Montana state lines and thence sells and delivers gas to Billings Gas Company, which in turn transports the same through a transportation pipe line to Billings, Montana, and to other cities and towns in the state where it is resold for ultimate public consumption. The flow of natural gas through the interconnected facilities of the Ohio Oil Company and the Billings Gas Company to point of local distribution in Montana is a continuous transportation of natural gas in interstate commerce. Both the Ohio Oil Company and the Billings Gas Company are engaged in such transportation and, therefore, come within the definition of natural gas companies in the Natural Gas Act and are not within the exemption of Section 1b, *supra*."

It is interesting to note that the State Court in its decision held that appellant's activities fell within the exemption of Section 1b of the Natural Gas Act, although the activities of appellant in the State of Illinois did not differ one jot from the activities of the Billings Gas Company in the State of Montana in the Federal Power Commission's decision wherein the exemption extended by Section 1 of the Act was held to be inapplicable because the business of the Billings Gas Company was interstate in character.

From the foregoing decisions, it would appear that appellant, in transporting, selling at wholesale, and delivering in Illinois, natural gas produced in Texas and Kansas, and received by appellant from the interstate pipe line of its parent company, Panhandle Eastern Pipe Line Company, is engaged in interstate commerce. The

reduction in pressure, the change of title and change of custody, occurring as the gas is fed into appellant's pipe lines in Illinois, directly from the main gas transmission pipe line of Panhandle Eastern Pipe Line Company, in no wise interrupt or break or bring the interstate transportation of the gas to an end.

In this connection it is interesting to note that in the State of Missouri, Panhandle Eastern Pipe Line Company, appellant's parent company, owns not only the main transmission line, but also the various lateral or branch lines which are used to convey gas to the several utility distributing companies and industrial consumers to which it transports and sells natural gas in that state and that the manner of transporting and effecting delivery of the gas through such main and lateral lines from the sources of supply of said gas to such customers in the State of Missouri, including reductions in pressure and all other matters of operation, is identical with the joint operations of Panhandle Eastern Pipe Line Company and appellant, its subsidiary, in effecting the transportation and delivery to appellant's customers in the State of Illinois (R. 32). The Supreme Court of Missouri, in the case of *Panhandle Eastern Pipe Line Co.* v. *Public Service Commission et al.*, 93 S. W. 2d 675, held that the transportation of natural gas through Panhandle Eastern Pipe Line Company's main transmission line and the transportation and delivery thereof through the lateral or branch lines were interstate in character and free from state regulation. We assume that appellees would not contend that Panhandle Eastern Pipe Line Company's activities in the State of Missouri were intrastate in character and if this assumption is correct, it is clear that if appellees are to draw any legal distinction between appellant's activities in Illinois and Panhandle Eastern Pipe Line Company's activities in Missouri, they must place their sole reliance upon the remaining circumstances of separate ownership of appellant's property in Illinois and the passing of title and custody of gas en route, none of which appears to be of

importance if the rule is to be followed that what is interstate commerce is to be determined by practical considerations based upon actual facts and the normal course of business rather than upon technical legal concepts, title and niceties of form.

The steady flow of the stream of gas through the combined facilities of appellant and its parent company to the points of destination contemplated by both parties when the gas is first set in motion, hundreds of miles distant, presents a complete and integrated picture, having all the essential earmarks of interstate commerce. The State Court's decision that appellant's business is purely local and intrastate in character finds itself wholly unsupported by the authorities, even those upon which the State Court leans for support, and the validity of the Illinois Commerce Commission's order must, therefore, be resolved in the light of the propriety of its application to a company—the appellant—engaged in the interstate transportation, sale and delivery of natural gas in Illinois.

II.

The Illinois Commerce Commission Has No Jurisdiction under the Illinois Commerce Commission Act Over Appellant's Activities.

If appellant is engaged in interstate commerce, as appellant asserts, the very language of the Illinois Commerce Commission Act itself (Sometimes referred to as the Illinois Public Utilities Act), under which the Illinois Commerce Commission exists and functions, denies to the Illinois Commerce Commission any jurisdiction or authority to enter the order herein contested by appellant. Section 90 of the Act provides as follows:

> "90. ACT NOT APPLICABLE TO INTERSTATE COMMERCE. Neither this Act nor any provision thereof shall apply or be construed to apply to commerce with

foreign nations or commerce among the several states of this Union, except when specifically so stated, and insofar as the same may be permitted under the provisions of the Constitution of the United States and the Acts of Congress and the decisions of the Supreme Court of the United States."

It appears obvious from this language that not only did the Illinois legislature intend to forestall, upon the part of the Illinois Commerce Commission, the imposition of any unconstitutional burdens upon or regulation of interstate commerce in contravention of the Commerce Clause of the Constitution of the United States, acts of Congress and the decisions of the Supreme Court of the United States, but also to forestall any and all action by the Illinois Commerce Commission involving interstate commerce, whether unconstitutionally burdensome or not, unless authority for such action was specifically granted in the Act. If this were not so, it appears that there would be no valid reason for the inclusion in Section 90 of the Act of the language "except when specifically so stated." If the legislature intended that the Act should apply to interstate activities, there would appear to have been no occasion for the inclusion of the above quoted words. the only reasonable effect of which is to restrict the application of the Act, and the power and authority of the Illinois Commerce Commission thereunder, to matters purely intrastate in character except when the Act itself otherwise specifically states, and even in this exceptional situation, only to the extent that would not cause the Illinois Commerce Commission to collide with the Constitution of the United States, acts of Congress or decisions of the Supreme Court of the United States.

We do not find language in the Act from which it would appear that the interstate activities of appellant were to be subject, in the matter of compulsory extension of facilities and rendition of service, to the same liabilities and duties as those of a purely intrastate public

utility. Nor do we find any language in the Act whereby Section 50 of the Act (Appendix "A"), under which the Illinois Commerce Commission purported to act in issuing the order herein resisted, is made "specifically" applicable to interstate commerce. Absent Section 90 of the Act, appellee might have contended that Section 50 applied to both intrastate and interstate activities alike, subject only to the superior authority of the Federal Constitution and acts of Congress, but in the face of the restrictive language contained in Section 90, it appears that the Illinois Commerce Commission has usurped authority intended to be withdrawn from it by the Act itself.

While appellant does not relent from its position that the order of the Illinois Commerce Commission imposes an unconstitutional burden upon and regulation of appellant's interstate activities, appellant does assert that, even if the order of the Illinois Commerce Commission would not impose such a burden upon appellant's interstate activities or constitute such a regulation of its interstate activities as to be unconstitutional, the order, nevertheless, is invalid for the reason that the Illinois Commerce Commission has assumed jurisdiction over activities, which, by the express language of the Act, are intended to be free of regulation by the Illinois Commerce Commission. As was so aptly said by the Supreme Court of the *State of Illinois in St. Louis Connecting R. R. Co.* v. *Blumberg*, 325 Ill. 387, 156 N. E. 298:

> "If the right of way here sought to be condemned were for the use of intrastate railway, then a different question might arise as to appellant's right to invoke the sovereign power, as such railways are subject to the Illinois Commerce Commission, while interstate railways are expressly excepted from its control by Paragraph 109, Chapter 111A of Callaghan's Statutes."*

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*Section 90 of the Illinois Commerce Commission Act.

Moreover, no contention has ever been made by appellee that appellant would be subject to the Illinois Commerce Commission, at least as respects the subject matter of the order herein resisted, if appellant were engaged in interstate commerce, appellee's sole contention being, not that the order imposes no unconstitutional burden upon or regulation of interstate commerce or that it only indirectly and constitutionally burdens such commerce, but that, as the State Court said, such order "affects only intrastate commerce" and that appellant is engaged only in intrastate commerce and therefore subject to the order.

Jurisdiction of the subject matter—regulation of interstate commerce, even in a constitutional sense—having been expressly withdrawn from the Illinois Commerce Commission by the provisions of the Illinois Commerce Commission Act, it may be pertinent to note here that appellant could not be said to have conferred such jurisdiction upon the Illinois Commerce Commission by filing its rate schedules with said commission and requesting and receiving from it certificates of convenience and necessity. Appellant's activities in Illinois could not, it seems, make intrastate that which was and is essentially interstate in law and fact.

It seems apparent, in view of Section 90 of the Act, that the assumption by Illinois Commerce Commission of unconferred regulatory powers with respect to the business of appellant and the submission thereto by appellant and its predecessor, Panhandle Illinois Pipe Line Company, were due to a mutual misconception of the legal nature of the activities of appellant and its predecessor in Illinois. This mutual mistake could not, of course, confer jurisdiction of the interstate subject matter upon Illinois Commerce Commission or change an essentially interstate course of activities into an intrastate one.

III.

The Illinois Commerce Commission's Order Is Repugnant to and in Conflict with the Commerce Clause of the Federal Constitution.

If appellant is engaged in interstate commerce, as asserted by it, the question then arises as to whether the order of the Illinois Commerce Commission has such a direct and immediate effect upon appellant's activities as to contravene the Commerce Clause of the Federal Constitution. Appellant concedes that not every interference or burden imposed by a state upon interstate commerce is proscribed by the Federal Constitution, but it does maintain that the character of the burden and interference of the order of the Illinois Commerce Commission imposed upon appellant's interstate activities is so direct and immediate in its consequences, aside from any consideration of the propriety of the order under the Natural Gas Act, as to render it unconstitutional and void.

If a state enactment imposes a direct burden upon interstate commerce, it must fall regardless of federal legislation. Thus, prior to the enactment of the Natural Gas Act, the question of the validity of the order of the Illinois Commerce Commission would have turned upon whether it imposed such a direct burden upon appellant as to render it unconstitutional under the Commerce Clause of the Federal Constitution. On the other hand, if the order of the Commission, in the absence of federal legislation, would have been within the power of the Illinois Commerce Commission, the question still remains, in view of the enactment of the Natural Gas Act, as to whether the order is void and unconstitutional because it is repugnant to the statute which Congress has enacted. Consideration of this last question will be deferred until later in the argument.

The states cannot, under any guise, impose direct burdens upon interstate commerce nor may states regu-

late or restrain that which, from its nature, should be under the control of one authority and be free from restriction save as it is governed in the manner that the national legislature ordains. *Minnesota Rate Cases*, 230 U. S. 352, 57 L. Ed. 1511.

Cases in which state legislation and orders of state regulatory commissions have been held unconstitutional because the laws or orders were repugnant to the Commerce Clause of the Federal Constitution are legion. By far the largest percentage of such cases have perhaps involved questions of taxation. On the other hand, burdens upon and interference with the free and unobstructed flow of interstate commerce have frequently been held immune from attack upon constitutional grounds when they stemmed from the reserved police power of the states and did not constitute, in the face of congressional inactivity on the subject matter, such direct and immediate burdens upon interstate commerce as to fall within the class of subjects upon which states are forbidden to act by the Commerce Clause of the Federal Constitution. By the very nature of the inquiry, therefore, each case must stand or fall upon its own particular facts. The general principles seem clear; the application of these same principles to concrete situations frequently entails difficulties. The citation of adjudicated cases pro and con, while helpful, are rarely of themselves decisive of the question as to whether or not a particular state law or order is so direct and immediate in its burden upon interstate commerce as to be forbidden by the Commerce Clause of the Federal Constitution.

Recognizing the inherent limitation in the citation of cases on such subject, the appellant nevertheless quotes hereinafter from a few wherein the analogy to the present situation is close and persuasive.

In *McNeill* v. *Southern Ry. Co.*, 202 U. S. 543, 50 L. Ed. 1142, the railroad discontinued its practice of delivering cars destined for the Greensboro Ice & Coal Com-

pany upon the Ice and Coal Company's private siding. The consignee Ice and Coal Company applied to and secured from the North Carolina Corporation Commission an order directing the railroad to deliver cars destined to the Ice and Coal Company upon the company's private siding. In holding the order of the North Carolina Corporation Commission unconstitutional, Justice White, speaking for this Court, said:

> "Without at all questioning the right of the state of North Carolina in the exercise of its police authority to confer upon an administrative agency the power to make many reasonable regulations concerning the place, manner and time of delivery of merchandise moving in the channels of interstate commerce, it is certain that any regulation of such subject made by the state or under its authority, which directly burdens interstate commerce, is a regulation of such commerce and repugnant to the Constitution of the United States.
>
> "Not being called upon to do so, we do not pass upon all the general regulations formulated by the Commission on the subject stated, but are clearly of opinion that the Court below rightly held that the particular application of those regulations with which we are here concerned was a direct burden upon interstate commerce and void. Viewing the order which is under consideration in this case as an assertion by the corporation commission of its general power to direct carriers engaged in interstate commerce to deliver all cars containing such commerce beyond their right of way and to a private siding, the order manifestly imposed a burden so direct and so onerous as to leave no room for question that it was a regulation of interstate commerce. On the other hand, treating the order as but the assertion of the power of the corporation commission to so direct in a particular case, in favor of a given person or corporation, the order not only was in its very nature a direct burden and regulation of interstate commerce, but also asserted a power concerning a subject directly covered by the act of Congress to regulate commerce and the amendments to that act, which forbid

and provide remedies to prevent unjust discriminations and the subjecting to undue disadvantages by carriers engaged in interstate commerce."

In *Houston & T. C. R.* v. *Mayes*, 201 U. S. 322, 50 L. Ed. 772, this Court held unconstitutional as a prohibited regulation of interstate commerce a Texas statute which penalized the failure of a railroad company to furnish cars to any shipper within a certain number of days after the shipper's request, in writing, and admitted of no excuse except such as might arise from strike or calamity. The Texas law "transcends," said this Court, the police power of the State of Texas.

In *Central of Georgia R. Co.* v. *Murphey*, 196 U. S. 194, 49 L. Ed. 444, the State of Georgia imposed upon the initial or any connecting carrier, as a condition of availing itself of a valid contract of exemption from liability beyond its own line, the duty of tracing the freight and informing the shipper, in writing, when, where and how, and by which carrier, the freight was last damaged or destroyed and giving the names of the parties and their official positions, if any, by whom the truth of the facts set out in the information could be established. The statute was held, as applied to an interstate shipment, to constitute a violation of the Commerce Clause of the Federal Constitution. This Court said:

> "The power to regulate the relative rights and duties of all persons and corporations within the limits of the state cannot extend so far as to thereby regulate interstate commerce. The police power of the state does not give the right to violate any provision of the Federal Constitution."

In *Pennsylvania* v. *West Virginia*, 262 U. S. 553, 67 L. Ed. 1117, there was involved the attempt by the State of West Virginia to give to her citizens a preferred right of purchase of natural gas over consumers in other states. In dealing with the question of interference with interstate commerce, this Court said:

"Of course, in the last analysis, the question is whether the enforced withdrawal for the benefit of local consumers is such an interference with interstate commerce as is forbidden to a state by the Constitution. The question is an important one; for what one state may do others may, and there are ten states from which natural gas is exported for consumption in other states. Besides, what may be done with one natural product may be done with others, and there are several states in which the earth yields products of great value which are carried into other states and there used. But, notwithstanding the importance of the question, its solution is not difficult. The controlling principles have been settled by many adjudications, some so closely in point that the discussion here may be relatively brief.

"By the Constitution, Article I, Section 8, Clause 3, the power to regulate interstate commerce is expressly committed to Congress and therefore impliedly forbidden to the states. The purpose in this is to protect commercial intercourse from invidious restraints, to prevent interference through conflicting or hostile state laws, and to insure uniformity in regulation. It means that in the matter of interstate commerce we are a single nation—one and the same people. All the states have assented to it, all are alike bound by it, and all are equally protected by it.

* * * * * * *

"Natural gas is a lawful article of commerce and its transmission from one state to another for sale and consumption in the latter is interstate commerce. A state law, whether of the state where the gas is produced or that where it is to be sold, which by its necessary operation prevents, obstructs, or burdens such transmission, is a regulation of interstate commerce—a prohibited interference."

In each of the foregoing cases, the state law or state commission's order involved was hardly more direct or immediate in its effect upon interstate commerce than is the order of the appellee Illinois Commerce Commission upon appellant's activities in the present case. If the Illinois Commerce Commission can order appellant

to extend its facilities twenty miles and to supply appellee Central Illinois Public Service Company with natural gas for resale to the ultimate consumers within the community or communities served by said appellee, then it could do so as to other localities and in favor of other local distributing companies, thereby impairing the ability of both appellant and appellant's parent company, Panhandle Eastern Pipe Line Company, to meet their respective preexisting contractual obligations to sell and deliver natural gas—a commodity produced only in nature and limited in quantity—at wholesale to wholly independent local distributing companies for resale to the ultimate consumers. The burden imposed by the order of the Illinois Commerce Commission appears so direct and so immediate as to constitute, beyond any peradventure of doubt, a burden which, under the Commerce Clause of the Federal Constitution, is a prohibited one.

As was indicated by this Court in *Missouri ex rel. Barrett* v. *Kansas Natural Gas Co.*, 265 U. S. 298, 68 L. Ed. 1027, the line of division between cases where, in the absence of congressional action, the state is authorized to act and those where state action is precluded by mere force of the Commerce Clause is not always clearly marked. But the Commerce Clause of the Constitution, of its own force, restrains the states from imposing direct burdens upon interstate commerce. The transportation, sale and delivery of natural gas in the present case constitutes, in the language of the Barrett case,

> "* * * an unbroken chain, fundamentally interstate from beginning to end * * *. The paramount interest is not local, but national—admitting of and requiring uniformity of regulation. Such uniformity, even though it be the uniformity of governmental nonaction, may be highly necessary to preserve equality of treatment among the various communities and states concerned."

In some of foregoing cases the enforcement of a wholesale selling price was held to place a direct burden upon interstate commerce inconsistent with the freedom of interstate trade which it was the purpose of the Commerce Clause to secure and protect. Surely it cannot be successfully contended that the order of the Illinois Commerce Commission imposes any less direct burden upon appellant's interstate activities than would the imposition of a wholesale selling price. The compulsory extension of appellant's facilities and the rendition by it of wholesale gas service interferes no less directly with its established course of business in Illinois than would a regulation by the Illinois Commerce Commission of its wholesale rates, which latter sort of regulation would, it seems, under the foregoing authorities, clearly constitute a violation of the Commerce Clause of the Federal Constitution.

IV.

The Order of the Illinois Commerce Commission Is Repugnant to and in Conflict with the Natural Gas Act.

If it be conceded that appellant is engaged in interstate commerce and that the order of the Illinois Commerce Commission imposes an unconstitutional burden upon such commerce in violation of the Commerce Clause of the Federal Constitution, all of which appellant asserts, then consideration of the effect of the Natural Gas Act upon such order would be wholly unnecessary to a finding by this Court that the order of the Illinois Commerce Commission is invalid and unconstitutional. But even if this Court were to take the view, as will be contended for by appellees, that the order of the Illinois Commerce Commission does not impose an unconstitutional burden upon appellant's business, assuming it to be interstate in character, and that the order, in the absence of Federal legislation embracing the regulation of interstate transportation and sale for resale of natural gas, is of such a nature and character as would have

been proper for the Illinois Commission to make, nevertheless such order still would be invalid and unconstitutional because it is in conflict with the Natural Gas Act. In short, the field of regulation of interstate transportation and sale of natural gas for resale was "occupied" by Congress, either wholly or partially, upon its enactment of the Natural Gas Act, so as to preclude the Illinois Commerce Commission from validly entering an order of the sort herein contested by appellant.

In 1938 Congress enacted 52 Stat. 821-833, 15 U. S. C. A., Secs. 717-717w, described therein as the "Natural Gas Act" in response to demands that the control and regulation of interstate transportation and sale of natural gas over which no regulatory body had theretofore successfully established any considerable degree of control, be confided to the Federal Power Commission in order to strengthen the hands of the state regulatory commissions in the regulation of purely local distributing companies.

Congress prefaced the Natural Gas Act with the following statement of the occasion for and the policy prompting its adoption:

> "Section 1(a). As disclosed in reports of the Federal Trade Commission, made pursuant to S. Res. 83 (70th Congress, First Session) and other reports made pursuant to the authority of Congress, it is hereby declared that the business of transporting and selling natural gas for ultimate distribution to the public is affected with a public interest, and that Federal regulation in matters relating to the transportation of natural gas and the sale thereof in interstate and foreign commerce is necessary in the public interest."

The mere circumstance that Congress has legislated upon the subject of interstate transportation and sale of natural gas does not, appellant concedes, *ipso facto* preclude state regulatory bodies, such as the Illinois Commerce Commission, from exercising any authority or con-

trol whatsoever over the interstate transportation of natural gas or the sale in interstate commerce of natural gas for resale for the uses and purposes specified in the Natural Gas Act unless it can be said that Congress has manifested, either expressly or by necessary implication, an intention that the jurisdiction and control of the Federal Power Commission, upon which Commission responsibility for the administration of the Act devolves, of such interstate transportation and sale of natural gas and over companies engaged therein shall be exclusive, leaving no room whatever for state action in the premises. If such is the intention of Congress to be inferred from the language of the Natural Gas Act, then the authority and jurisdiction of the Federal Power Commission is paramount and no state system or plan of regulation can be allowed to interfere with the unified and single control of the Federal Power Commission. The power of Congress in the field of interstate and foreign commerce is supreme under the Federal Constitution and once Congress has exercised that power by the enactment of legislation covering some phase of interstate commerce meant to be comprehensive and to embrace all activities of whatever sort or description within the field occupied by the legislation, then no state may properly interfere with or adopt auxiliary or complementary or supplemental legislation in the same field or do anything calculated to conflict with or frustrate the avowed purpose of Congress acting in the field in which its authority is second to none.

Whether Congress has as to any specific legislation manifested such an intention is not always a matter of ready or instant determination. Not infrequently, efforts have been made to attribute this effect to various acts of Congress, but in most instances such efforts have proved abortive on the ground that while Congress had the right to occupy the entire field, it actually circumscribed the regulation thereof and occupied only a limited portion of the field. In connection with the solution of this question, this Court said, in *Hines* v. *Davidowitz*, 85 L. Ed. 366:

"There is not—and from the very nature of the problem there cannot be—any rigid formula or rule which can be used as a universal pattern to determine the meaning and purpose of every act of Congress. This Court, in considering the validity of state laws in the light of treaties or federal laws touching the same subject, has made use of the following expressions: conflicting; contrary to; occupying the field; repugnance; difference; irreconcilability; inconsistency; violation; curtailment; and interference. But none of these expressions provides an infallible constitutional test or an exclusive constitutional yardstick. In the final analysis, there can be no one crystal clear distinctly marked formula. Our primary function is to determine whether, under the circumstances of this particular case, Pennsylvania's law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress."

Appellant is of the opinion, however, that by the adoption of the Natural Gas Act, Congress has as the court said in the Davidowitz case, enacted a "complete scheme of regulation and has therein provided a standard * * * (which) states cannot, consistently with the purpose of Congress, conflict or interfere with, curtail or complement, the Federal law, or enforce additional or auxiliary regulations."

The Natural Gas Act provides in Section 1 (b):

"The provisions of this chapter shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial or any other use, and to natural gas companies engaged in such transportation or sale, but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas."

The Natural Gas Act further provides in Section 2 (6):

> " 'Natural Gas Company' means a person engaged in the transportation of natural gas in interstate commerce or the sale in interstate commerce of such gas for resale."

The Natural Gas Act also provides in Section 2 (7):

> " 'Interstate Commerce' means commerce between any point in a state and any point outside thereof or between points within the same state but through any place outside thereof, but only insofar as such commerce takes place within the United States."

The broad and comprehensive language of the Natural Gas Act, by which its provisions are made applicable to the interstate transportation of natural gas and the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial and industrial, or any other use, and to natural gas companies engaged in such interstate transportation and sale of natural gas, the comprehensive character of the power vested in the Federal Power Commission to control and regulate the manifold activities of a natural gas company, and the congressional expression of public policy and necessity for the Act disclosed therein, all point strongly to the conclusion that while Congress welcomed the cooperation of the state commissions in the administration of the Act, it nevertheless intended to set up a unified system of control and regulation of natural gas companies that would brook no interference of any character from the Illinois Commerce Commission or any other similar state regulatory body insofar as regulation of or control of a natural gas company of the character defined in the Act is concerned.

That appellant is engaged in the transportation of natural gas in interstate commerce and the sale in interstate commerce of such gas for resale for the uses and purposes indicated in the Natural Gas Act, and is, there-

fore, a "natural gas company" as defined in the Natural Gas Act, appears, from what has gone before, to admit of little doubt. If such be this Court's conclusion, then the invalidity and unconstitutionality of the order of the Illinois Commerce Commission directing appellant to extend its facilities and to require appellant to furnish natural gas at wholesale to appellee, Central Illinois Public Service Company, is established, and the claim of jurisdiction by the Illinois Commerce Commission over the subject matter of the order is no more than a usurpation of a power residing exclusively in the Federal Power Commission.

In *Alabama & Vicksburg Ry. Co.* v. *Jackson & Eastern Railway Co.*, 271 U. S. 246, 70 L. Ed. 928, it appeared that under the Constitution and Statutes of the State of Mississippi, a railroad corporation organized under the laws of that state had the right to "cross, intersect, join or unite its railroad with any other railroad heretofore or hereafter constructed at any points on their routes and upon the ground of such other railroad company with the necessary and proper turnouts, sidings, switches and other conveyances and * * * may exercise the right of eminent domain for that purpose." The Jackson & Eastern Railway Company instituted a proceeding under the state law to secure by eminent domain a state connection with the line of Alabama & Vicksburg Railway Company. The latter brought an equity suit to enjoin the former from pursuing the eminent domain proceeding. The Alabama & Vicksburg Railway Company asserted, among other grounds of relief, the claim that the Interstate Commerce Commission had exclusive jurisdiction over the establishment of junctions or physical connections between railroads engaged in interstate commerce and that the commission had not authorized the connection. This Court held:

> "Since then the authority of the Interstate Commerce Commission has been greatly enlarged and the

power of the states over interstate carriers correspondingly restricted * * * While none of the amendments in specific terms confer upon the commission exclusive power of physical connections between railroads engaged in interstate commerce, it is clear that the comprehensive powers conferred extend to junctions between main lines like those here in question.

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"It was not until Transportation Act * * * conferred upon the commission additional authority, that it acquired full power over connections between interstate carriers. By Sections 18-20 added to Section 1, it vested in the commission power to authorize constructions or extensions of lines although the railroad is located wholly within one state; and by Section 21 authorized the commission to require the carrier 'to extend its line or lines.'

* * * * * * *

"Over all these matters the Commission has exclusive jurisdiction.

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"It is true that in this case the State Court found that the place selected for the junction was a proper one. But the power to make the determination, whether state action will obstruct interstate commerce, adheres in the United States as an incident to regulating such commerce. * * * Congress has vested in the Commission the authority to find the facts and thereon to exercise the necessary judgment."

In *O'Brien* v. *Western Union Telegraph Co.*, 113 F. 2d 539, the Court held that the question whether the Telegraph Company was or was not privileged in transmitting a message alleged to be libelous must be determined by uniform Federal rules. It stated that the Telegraph Company was subject to the Communications Act of 1934 and to the regulations thereunder by the Federal Communications Commission and significantly added:

"Congress having occupied the field by enacting a fairly comprehensive scheme of regulation, it seems clear that questions relating to the duties, privileges

and liabilities of telegraph companies in the transmission of interstate messages must be governed by uniform Federal rules."

In *Kentucky Natural Gas Corporation* v. *Public Service Commission of Kentucky et al.*, 28 F. Supp. 509, the Court said, in connection with the enactment of the Natural Gas Act:

> "Since the institution of the action, Congress has passed the Federal 'Natural Gas Act,' approved June 21, 1928, 15 U. S. C. A., Secs. 717-717w, committing to the Federal Power Commission the regulation of all matters relating to the transportation and sale of natural gas in interstate commerce.
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> * * * * * * *
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> "Congress has seen fit to exercise its authority over this particular type of commerce by the enactment of the Natural Gas Act. The Commerce Clause of the Constitution, U. S. C. A., Art. 1, Sec. 8, Clause 3, admits of no divided authority in the national field. 'Wherever the interstate and intrastate transactions of carriers are so related that the government of the one involves the control of the other, it is Congress, and not the state, that is entitled to prescribe the final and dominant rule * * *' See *Currin* v. *Wallace*, 306 U. S. 1, 11, 59 S. Ct. 379, 385, 83 L. Ed. 441, and cases cited therein.
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> "My conclusion is that such local activities as are here shown to be present are insufficient to carry them into the field of state authority. Jurisdiction to regulate the business of the Complainant herein involved has been conferred by Congress upon the Federal Power Commission. Its authority is paramount and exclusive."

On appeal to the Circuit Court of Appeals, Sixth Circuit, the Kentucky Natural Gas Corporation case was affirmed (119 F. 2d 417) upon the conclusions announced in the District Court Judge's opinion. The Appellate Court said:

"From the findings of fact announced in the above cause by the District Court, and not challenged by the appeal, it clearly appears that the appellee is engaged solely in interstate commerce; that its interstate pipe lines from which gas is wholesaled under high pressure to distributing companies and utilities, is an interstate facility through which gas flows into Kentucky from other states and from Kentucky into other states; that as such it is not subject to the powers of the State Commission and is within the field of regulation now occupied by the federal government under the Federal Natural Gas Act of June 21, 1938, 15 U. S. C. A., Secs. 717-717w, committing to the Federal Power Commission the regulation of all matters relating to the transportation and sale of natural gas in interstate commerce; and

"It appearing to us that the opinion of the District Judge in *Kentucky Natural Gas Corporation* v. *Public Service Commission of Ky.*, (D. C.) 28 F. Supp. 509, so fully considers and so correctly disposes of the legal issues involved upon apposite and controlling authority, that the case should be and it is hereby affirmed upon the conclusions therein announced."

It appears that the overriding and paramount authority of Congress under the Federal Constitution has been asserted and established under the Natural Gas Act and that the State of Illinois and its instrumentality, the Illinois Commerce Commission, must acknowledge the superiority of Congress and its instrumentality, the Federal Power Commission, in all matters within the expressed or implied scope of the Natural Gas Act, over which Congress has manifested its intention that control and regulation shall be committed exclusively to Federal Power Commission. Upon the theory that the Natural Gas Act is an expression of Congress that the regulation of natural gas companies engaged in the transportation and sale of natural gas shall be exclusively vested in all respects in the Federal Power Commission to the total exclusion of state action, it would be unnecessary to determine whether the order of the Illinois Commerce Commission is of such

a nature and character as to be repugnant to and in direct conflict with some particular provision of the Natural Gas Act. The exact character and nature of the order of the Commission would then be immaterial for the reason that the intention of Congress, to use a hackneyed expression, to "occupy the field" to the total exclusion of the Illinois Commerce Commission would of itself strip the state commission of any power in the premises irrespective of the existence of a specific conflict between the order and some particular provision of the Natural Gas Act.

If it be conceded for the sake of argument, however, that Congress has not by the enactment of the Natural Gas Act adopted such a complete scheme of regulation as to forestall all state action in the field of regulation of interstate transportation, sale and delivery of natural gas, the order of the Illinois Commerce Commission nevertheless would be invalid and unconstitutional for the reason that it is directly repugnant to and in conflict with specific provisions of the Act. The order of the Illinois Commerce Commission is of a sort that cannot be reconciled with the Act, nor can the order and the Act consistently stand together. Appellant concedes that this Court insists, except in cases where Congress has enacted a scheme of total regulation, that before state regulations or the regulations of a state commission be felled as being in contravention of an Act of Congress, that such conflict and repugnance be so direct and positive that the two cannot be reconciled or consistently stand together.

The conflict between the order of the Illinois Commerce Commission and Section 7(a) of the Natural Gas Act (Appendix B) is direct and positive. If the order of the Illinois Commerce Commission is permitted to stand, the appellant may be said to be subject to the jurisdiction of two masters as to precisely the same subject matter. It is of little use for the appellees to argue

that the Natural Gas Act does not for every purpose exclude state action and that a natural gas company may be, therefore, subject to control by both State and Federal regulatory bodies, where, as in the present case, the particular subject matter of the order herein contested is unequivocally within the express purview and scope of the powers vested by the Natural Gas Act in the Federal Power Commission. Congress has authorized the Federal Power Commission to meet the public need in the particular matter in question involved in the order of the Illinois Commerce Commission. Priority as between the Illinois Commerce Commission and Federal Power Commission, as applied to the extension of facilities and the compulsory sale of natural gas ought not to be dependent upon the mere circumstance that the State Commission has first asserted jurisdiction in the premises. A fertile field for jurisdictional wrangles is presented unless the paramount and exclusive federal authority, established by the Constitution itself and voiced by Congress, in all respects in which the Natural Gas Act may expressly or impliedly regulate and control the interstate transportation and sale of natural gas, be sustained.

In *People ex rel. N. Y. C. R. Co.* v. *Public Service Comm.*, 233 N. Y. 113, 135 N. E. 195, the Court said:

> "The Interstate Commerce Commission is clothed with authority by the section quoted to compel carriers to afford reasonable and proper facilities for the interchange of traffic between their respective lines. * * * To sustain the order of the Public Service Commission in the instant case would necessarily establish that the two several commissions mentioned were clothed with jurisdiction to grant the relief sought and require us to ignore the well established principle of law that Congress having delegated to the Interstate Commerce Commission power to deal with the subject matter of this proceeding, an exercise of like power by the state is to be suspended."

In *Erie R. R. Co.* v. *N. Y.*, 233 U. S. 671, 58 L. Ed. 1149, the laws of the State of New York prescribed what should constitute a day's work for block system telegraph and telephone operators and signal men on railroads, the duration of which said day's work was less than the day's work prescribed by the Hours of Service Act of Congress, applicable to labor of interstate railway employees. This Court said:

> "The relative supremacy of the state and national power over interstate commerce need not be commented upon. Where there is conflict, the state legislation must give way. Indeed, when Congress acts in such a way as to manifest its purpose to exercise its constitutional authority, the regulatory power of the state ceases to exist.
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> "We realize the strength of these observations, but they put out of view, we think, the ground of decision of the cases, and, indeed, the necessary condition of the supremacy of the congressional power. It is not that there may be a division of the field of regulation, but an exclusive occupation of it when Congress manifests a purpose to enter it."

Again, in *Chicago, R. I. & P. R. Co.* v. *Hardwick Farmers Elev. Co.*, 226 U. S. 426, 57 L. Ed. 284, in which case laws of the State of Minnesota requiring railway companies to furnish freight cars on demand under penalty for each day's delay, not due to certain excepted causes, were under attack, and which said laws were claimed to conflict with a Federal law imposing a specific duty upon railway carriers to furnish cars upon reasonable request, this Court said:

> "The argument at bar has been primarily concerned with the question of the validity of the Minnesota statute, considered as having been enacted in the exercise of a power assumed to exist to legislate reasonably in the absence of action by Congress on the subject of the delivery when called for, of cars to be used in interstate traffic. Thus, counsel for the

defendant in error urges the correctness of the action of the Supreme Court of Minnesota in sustaining the statute, upon the hypothesis that Congress had not legislated on the subject, and that the act was a reasonable exertion of the power of the state. On the contrary, on behalf of the railroad company it is insisted that even upon the assumption that the state had power to deal with the subject for which the statute provides, in the absence of legislation by Congress, the enactment is nevertheless void, since it but expresses a policy which by penalization, fines, and forfeitures will substitute for a free and unrestrained flow of commerce a service favoring a particular locality and shippers within the confines of one state, to the disadvantage of others. We are not, however, called upon to test the merits of these conflicting contentions, since we are of opinion that by the act of June 29, 1906, known as the Hepburn Act, 34 Stat. at L. 584, Chap. 3591, U. S. Comp. Stat. Supp. 1911, p. 1288, amendatory of the act to regulate commerce, Congress has legislated concerning the deliveries of cars in interstate commerce by carriers subject to the act.

* * * * * * *

"As legislation concerning the delivery of cars for the carriage of interstate traffic was clearly a matter of interstate commerce regulation, even if such subject was embraced within that class of powers concerning which the state had a right to exert its authority in the absence of legislation by Congress, it must follow, in consequence of the action of Congress to which we have referred, that the power of the state over the subject matter ceased to exist from the moment that Congress exerted its paramount and all-embracing authority over the subject. We say this because the elementary and long settled doctrine is that there can be no divided authority over interstate commerce, and that the regulations of Congress on that subject are supreme. It results, therefore, that in a case where, from the particular nature of certain subjects, the state may exert authority until Congress acts, under the assumption that Congress, by inaction, has tacitly authorized it to do so, action by Congress

destroys the possibility of such assumption, since such action, when exerted, covers the whole field, and renders the state impotent to deal with a subject over which it had no inherent, but only permissive, power. *Southern R. Co.* v. *Reid*, 222 U. S. 424, 56 L. Ed. 257, 32 Sup. Ct. Rep. 140."

More recently, in the case of *Missouri Pacific Railway Co.* v. *Stroud*, 267 U. S. 404, 69 L. Ed. 683, wherein an effort was made to recover treble damages from the railroad under statute of the State of Missouri which prohibited any common carrier from making or giving any undue or unreasonable preference or advantage to any particular person in the transportation of goods, this Court said:

"Congress, in the exertion of its power over commerce among the parties, has enacted laws for the regulation of furnishing of cars to shippers. * * * It is elementary and well settled that there can be no divided authority of interstate commerce and that the Acts of Congress on that subject are supreme and exclusive. * * * The state law has no application to the furnishing of cars to shippers for the transportation of freight in interstate commerce."

Not only does the order of the Illinois Commerce Commission, therefore, attempt to operate in a field already adequately occupied and filled by Federal legislation; it did in this instance compel the appellant to do that which has specifically been forbidden by the provisions of the Natural Gas Act without the explicit consent of the Federal Power Commission. The order of the Illinois Commerce Commission sought to compel the appellant to extend its facilities to a market in which natural gas was already being served by another company which was, apparently, a natural gas company within the meaning of the Natural Gas Act. Appellant could not legally have undertaken such extension of facilities under the Natural Gas Act, without first having applied for and secured from the Federal Power Commission a certificate

that the present or future public convenience and necessity require or will require such new construction or operation of such facilities and extensions thereof (Sec. 7 (c)—Appendix B). The record discloses that the Universal Gas Company, operating in the State of Indiana and receiving its supply of natural gas from the Kentucky Natural Gas Company, supplies appellee, Central Illinois Public Service Company, with natural gas for resale in Mattoon, Charleston, Effingham, Paris, and in a few smaller communities in Illinois; the point of delivery for all such gas being the point of connection between the facilities of Central Illinois Public Service Company and Universal Gas Company at the Illinois-Indiana state boundary line near Paris, Illinois (R. 42, 43). Under the Natural Gas Act a natural gas company may not legally invade the market of another natural gas company, absent some compelling reason therefor, and then only in the event the prior consent of Federal Power Commission is secured. The order of the Illinois Commerce Commission, therefore, in addition to being of a sort that would under any circumstances constitute a usurpation of power and prerogatives vested by Congress exclusively in the Federal Power Commission, in this particular instance is coercive in the extreme for the reason that the invasion of the market of the Universal Gas Company by appellant, which the order of the Illinois Commerce Commission seeks to compel the appellant to do, would result, upon appellant's compliance with the order of the Illinois Commerce Commission, in appellant's incurring the likelihood of penalties under the Natural Gas Act, by which Act Congress has delegated exclusive authority to Federal Power Commission to determine the necessity for and the advisability of such action. If this Court were to vouchsafe concurrent jurisdiction to the Illinois Commerce Commission in the matter of determination of the necessity for extension of facilities and the sale of natural gas under the circumstances disclosed by the order of the Illinois Commerce Commission, this

appellant would be placed in the unhappy position of having to serve two masters, as to precisely the same subject matter. If such concurrent authority is possessed by the Illinois Commerce Commission, then the Natural Gas Act would effectively be emasculated and the paramount power of Congress in the field of interstate transportation of natural gas would be frustrated. That such result could not reasonably be the one contemplated or intended by Congress appears self-evident. As a matter of fact the very necessity and basis for the enactment of the Natural Gas Act would be removed at one fell swoop for it was upon the very assumption that the power of the state regulatory bodies did not embrace the activities of a natural gas company transporting natural gas in interstate commerce and that, therefore, the regulation of purely local distributing companies receiving their gas supply from such interstate natural gas companies was rendered more difficult and less effective by reason of the lack of control of state regulatory bodies over such natural gas companies, that the Natural Gas Act was sponsored by state regulatory commissions themselves. Illustrating the attitude of the state regulatory commissions in this connection is a resolution adopted by the National Association of Railroad and Utilities Commissions, adopted in 1935 and presented at a hearing before the sub-committee of the committee on interstate and foreign commerce of the House of Representatives, 74th Congress, second session, in connection with its consideration of H. R. 11662, a forerunner to the present Natural Gas Act, which resolution ran as follows:

> "Whereas, the business of transmission and sale of gas in interstate commerce at wholesale for resale, under decisions of the Supreme Court of the United States, is not subject to regulation by the states and, in absence of Federal legislation provided therefor, is left wholly unregulated; and
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> "Whereas, jurisdiction to regulate such business should be vested in some tribunal so that gas supplied

to distributing companies in interstate commerce may be obtained at just and reasonable prices: Therefore be it

"RESOLVED, That this association favors the enactment by Congress of legislation vesting jurisdiction in some one of the existing Federal regulatory commissions to regulate the service of supplying gas, whether artificial or natural, produced in one state and sold at wholesale to a distributing company in another state, including rates applicable to such service; and be it further

"RESOLVED, That Congress be asked to limit the jurisdiction granted strictly to gas transmitted and sold at wholesale for resale, and that such legislation be so drawn as in no way to limit or impair the power of the states to regulate intrastate and local service and the rates applicable thereto; and be it further

"RESOLVED, That the committee on legislation be directed to present this resolution to the chairman of the appropriate committees of the two Houses of Congress and to support the passage of such legislation."

It is apparent, therefore, that if an order of the sort promulgated by the Illinois Commerce Commission is upheld the raison d'etre of the Natural Gas Act very largely ceases to exist and the Federal Power Commission would be relegated to a subordinate and subservient position—quite the contrary from that obviously intended by Congress and even sought by the regulatory bodies.

Conclusion.

It is submitted that the challenged order of the Illinois Commerce Commission and the Illinois Commerce Commission Act under which said order purports to have been made, as applied to appellant, and as construed by the State Court, impose upon appellant's interstate activities, a direct burden in contravention of the Commerce

Clause of the Federal Constitution and are in direct and positive conflict as so construed and applied, with the provisions of the Natural Gas Act, and that said statute and order made thereunder as so construed and applied to appellant are unconstitutional and void. The judgment of the Court below should be reversed.

Respectfully submitted,

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ALBERT C. SCHLIPF,
Springfield, Illinois,
Counsel for Appellant.

APPENDIX "A."

Illinois Commerce Commission Act, Chapter 111 2/3, Illinois Revised Statutes, 1939.

Section 50.

"ADDITIONS, IMPROVEMENTS AND NEW STRUCTURES-JOINT CONSTRUCTION. §50. Whenever the Commission, after a hearing had upon its own motion or upon complaint, shall find that additions, extensions, repairs or improvements to, or changes in, the existing plant, equipment, apparatus, facilities or other physical property of any public utility or of any two or more public utilities ought reasonably to be made or that a new structure or structures should be erected, to promote the security or convenience of its employees or the public, or in any other way to secure adequate service or facilities, the Commission shall make and serve an order directing that such additions, extensions, repairs, improvements or changes be made, or such structure or structures be erected in the manner and within the time specified in said order. If any additions, extensions, repairs, improvements or changes, or any new structure or structures which the Commission has ordered to be erected, require joint action by two or more public utilities, the Commission shall notify the said public utilities that such additions, extensions, repairs, improvements or changes or new structure or structures have been ordered and that the same shall be made at the joint cost whereupon the said public utilities shall have such reasonable time as the Commission may grant within which to agree upon the apportionment or division of cost of such additions, extensions, repairs, improvements or changes or new structure or struc-

tures, which each shall bear. If at the expiration of such time such public utilities shall fail to file with the Commission a statement that an agreement has been made for a division or apportionment of the cost or expense of such additions, extensions, repairs, improvements or changes, or new structure or structures, the Commission shall have authority, after further hearing, to make an order fixing the proportion of such cost or expense to be borne by each public utility and the manner in which the same shall be paid or secured."

APPENDIX "B."

Natural Gas Act, 52 Stat. 821-833, 15 U.S.C.A. 717-717w. Section 7.

"EXTENSION OF FACILITIES: ABANDONMENT OF SERVICE. (a) Whenever the Commission, after notice and opportunity for hearing, finds such action necessary or desirable in the public interest, it may by order direct a natural-gas company to extend or improve its transportation facilities, to establish physical connection of its transportation facilities with the facilities of, and sell natural gas to, any person or municipality engaged or legally authorized to engage in the local distribution of natural or artificial gas to the public, and for such purpose to extend its transportation facilities to communities immediately adjacent to such facilities or to territory served by such natural-gas company, if the Commission finds that no undue burden will be placed upon such natural-gas company thereby: Provided, That the Commission shall have no authority to compel the enlargement of transportation facilities for such purposes, or to compel such natural-gas company to establish physical connection or sell natural gas when to do so would impair its ability to render adequate service to its customers.

"(b) No natural-gas company shall abandon all or any portion of its facilities subject to the jurisdiction of the Commission, or any service rendered by means of such facilities, without the permission and approval of the Commission first had and obtained. After due hearing, and a finding by the Commission that the available supply of natural gas is depleted to the extent that the continuance of service is unwarranted, or that the present or future pub-

lic convenience or necessity permit such abandonment.

"(c) No natural-gas company shall undertake the construction or extension of any facilities for the transportation of natural gas to a market in which natural gas is already being served by another natural-gas company, or acquire or operate any such facilities or extensions thereof, or engage in transportation by means of any new or additional facilities, or sell natural gas in any such market, unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity require or will require such new construction or operation of any such facilities or extensions thereof: Provided, however, That a natural-gas company already serving a market may enlarge or extend its facilities for the purpose of supplying increased market demands in the territory in which it operates. Whenever any natural-gas company shall make application for a certificate of convenience and necessity under the provisions of this subsection, the Commission shall set the matter for hearing and shall give such reasonable notice of the hearing thereon to all interested persons as in its judgment may be necessary under rules and regulations to be prescribed by the Commission. In passing on applications for certificates of convenience and necessity, the Commission shall give due consideration to the applicant's ability to render and maintain adequate service at rates lower than those prevailing in the territory to be served, it being the intention of Congress that natural gas shall be sold in interstate commerce for resale for ultimate public consumption for domestic, commercial, industrial, or any other use at the lowest possible reasonable rate consistent with the maintenance of adequate service in the public interest."

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. [redacted] 100

ILLINOIS NATURAL GAS COMPANY,
Appellant.

vs.

CENTRAL ILLINOIS PUBLIC SERVICE COMPANY AND ILLINOIS COMMERCE COMMISSION.

APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS.

STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS OR AFFIRM OF THE CENTRAL ILLINOIS PUBLIC SERVICE COMPANY.

A. D. STEVENS,
GRAY HERNDON,
ELMER NAFZIGER,
Counsel for Appellee, The Central Illinois Public Service Company.

STEVENS & HERNDON,
Of Counsel.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 1078

ILLINOIS NATURAL GAS COMPANY,
Appellant.

vs.

CENTRAL ILLINOIS PUBLIC SERVICE COMPANY AND ILLINOIS COMMERCE COMMISSION,
Appellees,

APPEAL FROM THE SUPREME COURT OF ILLINOIS.

STATEMENT OF MATTERS MAKING AGAINST JURISDICTION OF THE SUPREME COURT OF THE UNITED STATES SUGGESTED BY APPELLEE, CENTRAL ILLINOIS PUBLIC SERVICE COMPANY.

Now comes the Central Illinois Public Service Company, one of the appellees in the above entitled cause, and presents this statement suggesting to the Court matters or grounds making against the jurisdiction of the Supreme Court of the United States asserted by the Appellant.

This appellee believes it to be of importance that there be drawn to the attention of the Court at the outset the fact that this proceeding in no way sought to invoke, nor was there exercised or attempted to be exercised by the State

Commission, any jurisdiction over the gas here in question, or over appellant in any of its dealings with such gas, prior to its delivery into appellant's laterals at their connections with the large transmission main through which it is brought into the State. The jurisdiction which the Commission was asked to, and did, exercise in this proceeding is limited to, and extends back only so far as to include, what transpires subsequent to the delivery of the gas into appellant's laterals.

This appellee also deems it of importance that the facts recited by the Illinois Commerce Commission in its Order and on which it based its findings in this proceeding, stand uncontroverted on the record and are undisputed by appellant.

Parties.

The Appellee Company (hereinafter referred to as "Central Illinois"), an Illinois corporation subject in all respects here in question to the jurisdiction of the Illinois Commission, furnishes natural gas to the public at retail through its distribution systems in Mattoon, Effingham, Paris and Charleston, Illinois, which are interconnected by inter-city mains; and at present procures the gas so distributed from a source other than Appellant, under arrangements insuring only from day to day a supply of natural gas, of lower B. T. U. content and at greater cost than that furnished by appellant.

Appellant (hereinafter referred to as "Illinois Natural") is also an Illinois corporation, and was organized in 1938 to succeed to the ownership and operation of a portion of the property theretofore owned by another Illinois corporation, the Panhandle Illinois Pipe Line Company (hereinafter referred to as "Panhandle Illinois"). This last named Company at that time owned and operated that part located within Illinois, of a large natural gas transmission main

extending from the Texas gas fields across the State of Illinois into Indiana and Michigan, and the laterals leading therefrom to the systems of gas utility companies throughout that portion of Illinois; and was engaged both in transmitting gas into and across the State through its large main, and in supplying gas to Illinois utilities through its laterals.

Facts.

Panhandle Illinois was a subsidiary of the Panhandle Eastern Pipe Line Company, a Delaware Corporation (hereinafter referred to as "Panhandle Eastern"), which is now the owner of the entire large transmission main from the Texas gas fields to Michigan. In February 1938 Illinois Natural, appellant here, and Panhandle Illinois, by joint petition, obtained from the Illinois Commission an Order authorizing the carrying out of a three-party contract providing for the transfer by Panhandle Illinois of its large transmission main extending across the State and all boosting and other equipment incidental to that main, to Panhandle Eastern; and the transfer to Illinois Natural, appellant here, of all Panhandle Illinois' remaining property and assets, including all laterals and their incidental equipment and the entire business of supplying Illinois utilities. The purpose of that proceeding was represented to the Commission by both appellant and Panhandle Illinois to be "the separation of the property and business of Panhandle Illinois Pipe Line Company to the end that the property and business which is purely intrastate and of a local utility character, will be owned and operated by the Illinois Natural Gas Company, an Illinois corporation, operated as a public utility in this state, and that the main line and compressor stations not used, useful or necessary in the conduct of a public utility business be transferred to the Panhandle Eastern Pipe Line Company, a Delaware corporation."

In that same proceeding appellant procured an Order from the State Commission approving a contract between appellant and Panhandle Eastern for the furnishing by Panhandle Eastern to appellant of all gas required by appellant for resale by appellant to the several distributing companies then, or thereafter to be, served by it; delivery of the gas from Panhandle Eastern to appellant to be at the respective points of connection of appellant's laterals with the large transmission main to be acquired by Panhandle Eastern, up to which points ownership, control and possession of and responsibility for the gas was expressly provided to be in Panhandle Eastern, but at which points ownership and exclusive control, possession and responsibility should pass to appellant.

The actions authorized by the Order were taken, and the appellant immediately filed with the Commission its rates, regulations and conditions of service, all of which have been thenceforth adhered to by appellant, except in the present instance, and with all of which appellant admits the Appellee Company, Central Illinois, will comply in obtaining the service here sought. The installation of the approximately twenty miles of lateral required to serve Appellee Company admittedly is within the service appellant holds itself out to perform, and the remuneration to be received by it admittedly is compensatory. Appellant stated to the record in this proceeding that it refrains from rendering the desired service solely because of its contention that the State Commission lacks jurisdiction to require it to render the service.

It further stands undisputed and uncontroverted on the record (1) that appellant has no ownership or interest whatsoever in Panhandle Eastern's large transmission line crossing the State or in any equipment aiding in the boosting of pressure or otherwise facilitating the transmission of gas in that main; this large main and all its incidental

equipment, and their operations are under the exclusive control of Panhandle Eastern; (2) that all laterals from point of their connection with Panhandle Eastern's large transmission main, and all equipment and property in any way entering into the movement of gas after leaving the large transmission main to delivery by appellant to its customers, are exclusively owned and controlled by Illinois Natural, the appellant; (3) that exclusive ownership, control of and responsibility for the gas itself from its receipt by appellant at the points of the laterals' connections to its delivery to appellant's customers is in appellant; (4) that the gas received by appellant is measured at such points of connection in accordance with detailed contract provisions for metering, and is paid for by appellant in accordance with the measurements so ascertained; (5) that appellant owns no public utility property not located in Illinois and not devoted exclusively to business within Illinois, and transacts no business outside the State of Illinois other than that it procures its supply of gas from Panhandle Eastern; (6) that immediately upon receipt of the gas at the points of connection between its laterals and the large transmission main, appellant itself reduces the pressure to such as it desires for economical lateral transportation, and that all other physical treatment and handling of the gas from such points of connection is exclusively by appellant, and occur wholly within Illinois; (7) that no gas passing into appellant's laterals leaves, or is intended to leave, the State of Illinois; (8) that all gas received by appellant is, from the time of its receipt at the points of connection, disposed of by appellant in accordance with rates, rules, regulations and conditions of service on file with and approved by the Commission; and (9) that the record is barren of any evidence or fact tending to show that compliance with the Commission's Order would have any harmful effect whatsoever upon the remaining gas transported by Panhandle Eastern

into or across the State, or upon any operations or business relating to such gas.

This appellee respectfully suggests, that the only facts present on the entire record which in any way distinguish the situation here presented to the Court from what it would be were the gas to be manufactured by appellant, or obtained by it from wells, at the points of its laterals' connections, are (1) that the movement of the gas in appellant's laterals occurs from what remains in the laterals of the pressure applied in Panhandle Eastern's large transmission main, and (2) that Panhandle Eastern, the interstate importer, itself estimates daily the amount of gas required by appellant.

Authorities Relied Upon by Appellee, Central Illinois.

The Natural Gas Act, upon which appellant relies exclusively as divesting the State Commission of jurisdiction in this case, expressly limits its application and effect to the transportation of natural gas in interstate commerce.

52 Stat. at L. 821-33; Title 15, U. S. C. A. 717-717W.

Neither the question of what constitutes interstate commerce, nor the question of what affects interstate commerce to an unwarranted extent, are to be determined by legal formula, but are to be determined from the facts as each individual case arises. "Interstate commerce is a practical conception and what falls within it must be determined upon consideration of established facts and known commercial methods."

Public Utilities Commission v. *Landon*, 249 U. S. 236, 63 L. Ed. 577;

Swift & Co. v. *United States*, 196 U. S. 375, 49 L. Ed. 518;

Foster Fountain Packing Co. v. *Kaydel*, 278 U. S. 1, 73 L. Ed. 147;

Lemke v. *Farmers Grain Co.*, 258 U. S. 50, 66 L. Ed. 458;

Schafer v. *Farmers Grain Co.*, 268 U. S. 189, 69 L. Ed. 909;

Sprout v. *South Bend*, 277 U. S. 163, 72 L. Ed. 833;

Philadelphia & Reading Ry. Co. v. *Hancock*, 253 U. S. 284, 64 L. Ed. 907.

Substance and not form is controlling in determining what is, and what is not, interstate commerce.

Rearick v. *Pennsylvania*, 203 U. S. 507, 51 L. Ed. 295;

Heyman v. *Hays*, 236 U. S. 178, 59 L. Ed. 527;

Savage v. *Jones, State Commission of the State of Ind.*, 225 U. S. 501, 56 L. Ed. 1182;

Swift & Co. v. *United States, supra.*

Continuous movement is not inconsistent with the closing of interstate, and the beginning of intrastate, transportation and commerce where pursuant to and in furtherance of the intentions, purposes and business of the transporters.

Atlantic Coast L. R. Co. v. *Standard Oil Co.*, 275 U. S. 257, 72 L. Ed. 270.

Continuous movement of gas under pressure supplied from without the State, is not of itself incompatible with a change from interstate to intrastate character.

Public Utilities Commission v. *Landon, supra;*

Missouri ex rel. Barrett v. *Kansas Natural Gas Co.*, 256 U. S. 298, 68 L. Ed. 1027;

East Ohio Gas Co. v. *Tax Commission*, 283 U. S. 465, 75 L. Ed. 1171;

Southern Natural Gas Corporation v. *Alabama*, 301 U. S. 148, 81 L. Ed. 970;

Lone Star Gas Co. v. *Texas*, 304 U. S. 224, 82 L. Ed. 1304;

Cloverdale v. *Arkansas-Louisiana Pipe Line Co.*, 303 U. S. 604, 82 L. Ed. 1043.

This Court has held that a change in pressure may have an effect akin to the breaking of an original package, and that the point of reduction in pressure was the end of interstate commerce in gas, even in the absence of separation of ownership or control.

East Ohio Gas Co. v. *Tax Commission*, 283 U. S. 465, 75 L. Ed. 1171.

This Court has recognized that there may be a "distinction between the transportation of gas into a State and the furnishing of the gas so transported to consumers within the State."

Southern Nat. Gas Corp. v. *Alabama*, 301 U. S. 148, 81 L. Ed. 970;

East Ohio Gas Co. v. *Tax Commission*, 283 U. S. 465, 75 L. Ed. 1171.

Under an interpretation by the Supreme Court of Kentucky, that the word "receipt" as used in a State Tax Statute referred to what was done by a retailer after receiving cosmetics imported from without the State rather than taking possession of them upon arrival, this Court held that the "receipt" as so construed related to an intrastate, and not an interstate, transaction.

J. Bacon & Sons v. *James W. Martin*, 305 U. S. 380, 83 L. Ed. 333, 335.

In dealing with facts practically identical with those present in this case, this Court has held that even where the importing company itself dealt with the gas after its importation in a manner substantially identical with that in which the gas here is dealt with by the intermediate appellant company, such subsequent transactions do not constitute interstate commerce.

Southern Nat. Gas Corp. v. *Ala.*, 301 U. S. 148, 81 L. Ed. 970.

The State Supreme Court applied to the facts in this case only rules of law with respect to what constitutes interstate commerce previously well settled by the decisions of this Court, and under such circumstances no substantial Federal question is involved.

Patterson v. *Standard Oil & Gas Co.*, 305 U. S. 376, 83 L. Ed. 231.

The mere fact that Panhandle Eastern estimates the quantity of gas for delivery to appellant should be in no sense controlling. Such estimates, if of any practical value, must necessarily comprehend the aggregate of the consumption by the ultimate consumers in Illinois, and clearly the mere fact of estimation could not operate to make interstate the relations between the Illinois utilities which are supplied by appellant and their ultimate consumers in the various cities served by them.

Authorities Relied Upon by Appellant.

The appellee, Central Illinois, respectfully suggests to the Court that the authorities relied upon by appellant to establish its transactions subsequent to its receipt of the gas as interstate in character, do not support appellant's contention.

The case of *Texas & N. O. R. Co.* v. *Sabine Tram Co.*, 227 U. S. 111, 57 L. Ed. 442, the first cited by appellant, concerned shipments of lumber from interior Texas to the purchaser at Texas Gulf ports, but destined at the time of the initial shipment for immediate reshipment by the purchaser from those ports to Europe. The evidence showed that the lumber was ordered manufactured and shipped for export, and that the shipment in Texas was but a step in a complete shipment to foreign destinations. The case could have application to the case here before the Court only upon an assumption that appellant acts merely as an

intermediate step, incident or convenience in a purchase and transportation of gas directly between Panhandle Eastern and appellee, Central Illinois.

The case of *R. R. Commission* v. *Texas & P. R. Co.*, 229 U. S. 336, 57 L. Ed. 1215, the second cited by appellant, is substantially identical in its facts with the case above noted.

In the case of *Western Oil Refining Co.* v. *Lipscomb*, 244 U. S. 346, 61 L. Ed. 1181, there was no intervening independent ownership and control between the Seller and Purchaser, and the handling and treatment of the oil and barrels in Tennessee, where it was sought to be taxed, was merely an intermediate incident or convenience in the completion of the transaction directly between the purchaser and seller.

The case of *Western Union Telegraph Co.* v. *Foster*, 247 U. S. 105, 62 L. Ed. 1006, the fourth cited by appellant, is clearly distinguishable from the situation here presented, in the fact that there existed in that case what amounted to a contract relation between the New York Exchange and Foster. The situation there dealt with was the same in principle as though appellee Company had arranged for its gas with Panhandle Eastern, with both parties contemplating that in transmitting gas from Panhandle Eastern to the appellee Company, the facilities of appellant would be used.

The case of *Missouri ex rel. Barrett* v. *Kansas Natural Gas Co.*, 265 U. S. 298, 68 L. Ed. 1027, arose over an attempt of the State Commissions to fix the rate to be charged by the importing company, which occupied a position analogous to that of the Panhandle Eastern in the case here before the court. However, even in dealing with that situation, the court pointed out that "the interests of the former" (the importing company) "in the commodity ends with its delivery to the latter" (the distributing company) "to which

title and control thereupon pass absolutely", and then went on to say—"With the delivery of the gas to the distributing companies, however, the interstate movement ends." The court further said—"The business of supplying, on demand, local consumers, is a local business, even though the gas be brought from another State, and drawn for distribution directly from interstate mains; * * *. In such case the local interest is paramount * * *".

The case of *Alabama & Vicksburg Ry. Co.* v. *Jackson & Eastern Ry. Co.*, 271 U. S. 244, 70 L. Ed. 928, involved the right of a State to compel a connection between two railroads, each doing an interstate business.

The case of *Public Utilities Commission of Rhode Island* v. *Attleboro Steam & Electric Co.*, 273 U. S. 83, 71 L. Ed. 549, holds only that a change of title and possession at the State line may occur without disturbing interstate character.

In the case of *Currin* v. *Wallace*, 306 U. S. 1, 83 L. Ed. 441, the auctions of tobacco there involved were found to be parts of transactions of sale, and the court said that "so far as the sales are for shipment to other states and to foreign countries, it is idle to contend they are not sales in interstate or foreign commerce and subject to commercial regulation. Where goods are purchased in one State for transportation to another, the commerce includes the purchase quite as much as it does the transportation." The analogy here attempted by appellant may fit the appellant's dealings with Panhandle Eastern, but it cannot be maintained as to conditions arising after the interstate sale has been consummated and made to apply to transactions which arise only after appellant's receipt of the gas, and are only between appellant and the utilities which it serves in Illinois.

The three remaining cases, *Pennsylvania* v. *West Virginia*, 262 U. S. 553, 67 L. Ed. 1117; *Harold B. Fiske* v. *State of Kansas*, 274 U. S. 380, 71 L. Ed. 1108; and *People of the State of New York ex rel. George W. Bryant* v. *Charles F.*

Zimmerman, et al., 278 U. S. 63, 73 L. Ed. 184, cited by appellant in support of its claim of right to appeal, are in no way in conflict with the rule of law which we have heretofore endeavored to present, that where the State court has correctly applied to the facts, rules of law established by the Supreme Court of the United States with respect to what constitutes interstate commerce, no substantial Federal question is involved.

This appellee respectfully and most earnestly suggests that the undisputed facts in this case preclude the existence of a substantial Federal question.

This appellee respectfully further suggests that the real contention of the appellant is, in fact, a claim of immunity from the Order of the Illinois Commission upon the ground that it is entitled to such immunity under the Natural Gas Act; and that appellant has not shown that the State court has held any Federal statute invalid or that there was drawn in question the validity of any statute of the State of Illinois, as is required to authorize a direct appeal to the United States Supreme Court under Section 237 (a) of the Judicial Code.

Respectfully submitted,

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Service Company.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 1078

ILLINOIS NATURAL GAS COMPANY,
Appellant,

vs.

CENTRAL ILLINOIS PUBLIC SERVICE COMPANY AND ILLINOIS COMMERCE COMMISSION,
Appellees.

APPEAL FROM THE SUPREME COURT OF ILLINOIS.

MOTION TO DISMISS APPEAL OR AFFIRM DECISION OF THE SUPREME COURT OF THE STATE OF ILLINOIS.

Now comes the Central Illinois Public Service Company, one of the Appellees, and moves this Court to dismiss the appeal taken herein by the Illinois Natural Gas Company on the ground that the case does not present any substantial Federal question; and on the additional ground that, if any Federal question whatever is involved, such question relates only to a claim of immunity under a statute of the United States which is a basis for review only on certiorari under Section 237(b) of the Judicial Code; and this Ap-

pellee further moves, if the motion to dismiss is not granted, that this Court affirm the judgment of the Supreme Court of the State of Illinois on the ground that the Federal question involved is so unsubstantial as to need no further argument, all as appears in the statement of grounds making against the jurisdiction of this Court filed herewith.

Dated this 5th day of May, 1941.

A. D. Stevens,
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Elmer Napziger,
Stevens & Herndon,
Attorneys for the Appellee, Central Illinois Public Service Company.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 1078

ILLINOIS NATURAL GAS COMPANY,
Appellant,

vs.

CENTRAL ILLINOIS PUBLIC SERVICE COMPANY AND ILLINOIS COMMERCE COMMISSION.

APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS.

STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS OR AFFIRM OF THE ILLINOIS COMMERCE COMMISSION.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 1078

ILLINOIS NATURAL GAS COMPANY,

Appellant,

vs.

CENTRAL ILLINOIS PUBLIC SERVICE COMPANY, ET AL.,

Appellees.

STATEMENT MAKING AGAINST THE JURISDICTION OF THIS COURT, TOGETHER WITH MOTION TO DISMISS OR AFFIRM.

The Illinois Commerce Commission, one of the appellees herein, by George F. Barrett, Attorney General of the State of Illinois, its attorney, pursuant to the provisions of Paragraph 3 of Rule 12 of this Court, respectfully submits the following statement disclosing matters and grounds making against the alleged jurisdiction of this Court as asserted by the appellant.

The Alleged Federal Questions Are Not Substantial and Have Been Repeatedly Passed Upon by This Court, Adversely to Appellant's Present Contentions.

The Panhandle Eastern Pipe Line Company, hereinafter called the Panhandle Company (*not* the appellant), gathers natural gas in Texas and Kansas and transmits it by its

high pressure mains through several States, including Illinois. In Illinois, these high pressure mains run in a generally east and west direction.

The Illinois Natural Gas Company, an Illinois corporation, appellant, owns and operates certain lateral transmission lines and incidental equipment, all located wholly within the State of Illinois, and sells gas to various public utilities, all of which are likewise located within said State. The appellant buys its gas from the Panhandle Company pursuant to a contract approved by the Illinois Commerce Commission.

This gas is delivered to the appellant at various points, all within the State of Illinois, where its lateral transmission lines intersect the high pressure (east to west) lines of the Panhandle Company, at which points the gas pressure is considerably reduced for economical transportation and delivery. The appellant, in turn, then delivers gas from its lateral transmission lines to various public utilities, all located in the State of Illinois, at which points the gas pressure is still further reduced. These local Illinois utilities then, in turn, distribute the gas to the ultimate consumers.

The appellant asks this Court to review and reverse a decision of the Supreme Court of the State of Illinois holding that the Illinois Commerce Commission has power to regulate appellant's business, all of which is located within the State of Illinois. Its contentions, in brief, are (1) that appellant's said business is such as to constitute interstate commerce, and (2) that the Congress of the United States, in enacting the Natural Gas Act, has given the Federal Power Commission exclusive jurisdiction over such matters.

Our contentions are, briefly, (1) that after the gas has once left the original high pressure interstate mains and has been delivered, under reduced pressure, to the appel-

lant's wholly intrastate transmission lines for delivery to wholly intrastate utilities at a still further reduced pressure, this constitutes, in effect, a breaking of the "original package" and marks the end of the "interstate commerce" character of the transactions; and (2) that the Natural Gas Act not only could not, but did not by its very terms, apply to such wholly intrastate matters. It is also our contention that these questions have been so well settled by the previous decisions of this Court that no substantial Federal questions, justifying the intervention of this Court, are involved.

I.

Interstate Commerce.

In the case of *Public Utilities Comm.* v. *Landon*, 249 U. S. 236, 63 L. Ed. 577, this Court, at page 245, said:

> "But in no proper sense can it be said, under the facts here disclosed, that sale and delivery of gas to their customers at burner tips by the local companies operating under special franchises, constituted any part of interstate commerce. The companies received supplies which had moved in such commerce, and then disposed thereof at retail in due course of their own local business."

In the case of *Missouri* v. *Kansas Gas Co.*, 265 U. S. 298, 68 L. Ed. 1027, this Court, at pages 308 and 309 said:

> "With the delivery of the gas to the distributing Companies, however, the interstate movement ends. * * * The business of supplying, on demand, local customers is a local business, even though the gas be brought from another State and drawn for distribution directly from interstate mains; and this is so whether the local distribution be made by the transporting Company or by independent distributing Companies. In such case the local interest is paramount, and the interference with interstate commerce, if any, indirect and of minor importance."

In the case of *East Ohio Gas Co.* v. *Tax Commission*, 283 U. S. 465, 75 L. Ed. 117, the appellant, an Ohio gas company, bought its gas outside that State. At the State line the gas went into the company's high pressure mains from which it was then transmitted, at reduced pressure, into its other lines for delivery to numerous municipalities throughout the State of Ohio. The State of Ohio sought to collect an occupational tax from the appellant measured by such sales. In upholding the State's powers, this Court said, at pages 471 and 472, as follows:

> "But when the gas passes from the distribution lines into the supply mains, it is necessarily relieved of nearly all of the pressure put upon it at the stations of the producing companies, its volume thereby is expanded to many times what it was while it was *while it was* in the high pressure interstate transmission lines, and it is divided into many thousand relatively tiny streams that enter the small service lines connecting such mains with the pipes on the consumer's premises. So segregated the gas in such service lines and pipes remains in readiness or moves forward to serve as needed. The treatment and division of the large compressed volume of gas is like the breaking of an original package, after shipment in interstate commerce, in order that its contents may be treated, prepared for sale and sold at retail."

In the case of *Southern Natural Gas Corp.* v. *Alabama*, 301 U. S. 148, 81 L. Ed. 970, the State sought to impose an excise tax. The appellant brought in gas from another State under high pressure and then reduced the pressure when effecting its deliveries. This Court upheld the State tax. After referring with approval and quoting (at page 154) the language which we have quoted above from the *Missouri* v. *Kansas Gas Co.*, and the *East Ohio Gas Co.* v. *Tax Commission* cases, this Court held that such transac-

tions were intrastate in nature and properly taxed, and, at page 155, again said:

> "The treatment and division of the large compressed volume of gas is like the breaking of an original package, after a shipment in interstate commerce, in order that its contents may be treated, prepared for sale and sold at retail."

We submit that the facts in the case at bar are clearly such as to bring this case within the rule, established by the above cited and other similar decisions of this Court, that the "interstate commerce" character of the distribution of the gas ceases when the gas is once withdrawn, under reduced pressure, from the high pressure interstate mains for distribution through purely intrastate transmission lines to purely intrastate public utilities at still further reduced pressures. The appellant's reference to such cases as *Peoples Natural Gas Co.* v. *Public Service Commission of Pennsylvania*, 270 U. S. 550, 70 L. Ed. 726, and *Pennsylvania* v. *West Virginia*, 262 U. S. 553, 67 L. Ed. 1117, where there were no such reductions in pressure, are obviously not such as to give color to its contentions.

II.

The Natural Gas Act.

In view of the law and the facts as above set forth, we submit that the Congress of the United States could not, even if it saw fit to do so, pass legislation, divesting the State of Illinois of its power to regulate appellant's purely intrastate business.

We also contend that the Congress, by the very terms of the Natural Gas Act itself, expressly refrained from attempting to regulate such purely intrastate matters. Section 1 (b) of this said Act provides, in part, as follows:

> "The provisions of this chapter shall apply to the transportation of natural gas in interstate commerce,

> to the sale in interstate commerce of natural gas for resale for ultimate public consumption * * * but shall not apply to other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas."

We therefore submit that the Natural Gas Act could not, and by its very terms does not, constitute such an exercise of power as to exclude State regulation of the appellant's purely intrastate distribution of natural gas.

Conclusion and Motions.

The Illinois Commerce Commission, by George F. Barrett, Attorney General of the State of Illinois, its attorney, therefore submits that no substantial Federal questions, justifying the review of the said decision by this Honorable Court, are involved, and therefore respectfully prays that this Court decline to accept jurisdiction in this case.

In the alternative, it also moves that this Honorable Court dismiss the said appeal, or, in a further alternative, that this Honorable Court affirm the judgment of the Supreme Court of the State of Illinois.

Respectfully submitted,

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Attorney General of the State of Illinois,
Attorney for the Illinois Commerce Commission.

ALBERT E. HALLETT, JR., and
ALBERT J. MESEROW,
Assistant Attorneys General
of the State of Illinois,
Of Counsel.

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Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1941.

No. 100

ILLINOIS NATURAL GAS COMPANY,
Appellant,

vs.

CENTRAL ILLINOIS PUBLIC SERVICE COMPANY AND ILLINOIS COMMERCE COMMISSION,
Appellees.

APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS.

BRIEF FOR APPELLEES.

GEORGE F. BARRETT,
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A. D. STEVENS,
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ELMER NAFZIGER,
Counsel for Central Illinois Public Service Company, an Appellee.

ALBERT E. HALLETT,
Assistant Attorney General, of Counsel.

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IN THE

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OCTOBER TERM, 1941.

No. 100.

ILLINOIS NATURAL GAS COMPANY,
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vs.

CENTRAL ILLINOIS PUBLIC SERVICE COMPANY AND ILLINOIS COMMERCE COMMISSION,
Appellees.

APPEAL FROM THE SUPREME COURT OF THE STATE OF ILLINOIS.

BRIEF FOR APPELLEES.

STATEMENT.

Origin of These Proceedings.

These proceedings originated by a petition filed with the Illinois Commerce Commission on May 22, 1939, by the Central Illinois Public Service Company. The petitioner sought to obtain from the Illinois Natural Gas Company a supply of natural gas delivered at or near the City of Mattoon, adequate to supply petitioner's needs as a public utility serving the cities of Mattoon, Effingham, Charleston, Paris and intermediate communities.

The Illinois Natural Gas Company answered, refusing to

furnish the service and as reason for the refusal set up the following grounds:

1. It is the wholly owned subsidiary of Panhandle Eastern Pipe Line Company, a Delaware corporation.

2. It is engaged in interstate commerce and therefore exempt (except in so far as it voluntarily submits itself thereto) from State regulation.

3. That since June 21, 1938, it has been subject to the sole and exclusive jurisdiction of the Federal Power Commission under the provisions of the Natural Gas Act.

Hearings were held by the Illinois Commerce Commission at which both parties introduced testimony, none of which was contradicted or impeached.

On November 30, 1939, the Illinois Commerce Commission ordered and authorized the Illinois Natural Gas Company to make a connection with Central Illinois Public Service Company's mains at or near the city of Mattoon, and to furnish the last named company with natural gas sufficient in quantity to supply the needs of the above named cities and intermediate communities under the rates, rules, regulations and conditions of service which the Illinois Natural Gas Company then had, or might thereafter have, on file with and approved by the Commission.

The Interested and Affected Parties.

(1) Central Illinois Public Service Company (hereafter called "Appellee Company"), which is incorporated under the laws of the State of Illinois, and holds certificates of Public Convenience and Necessity issued by the Illinois Commerce Commission to conduct a gas utility business in the above named cities and intermediate communities.

(2) Illinois Natural Gas Company (hereafter called "Appellant"), which is also incorporated under the laws of the State of Illinois and operates as a public utility un-

der certificates of Public Convenience and Necessity issued by the Illinois Commerce Commission.

(3) Panhandle Eastern Pipe Line Company (hereafter called "Panhandle Eastern"), a Delaware corporation, which is the parent company of Appellant, and owns the high pressure transmission line extending across Illinois from which Appellant receives its gas.

(4) The citizens of Mattoon, Effingham, Charleston and Paris and intermediate communities in which Central Illinois Public Service Company serves over 5,000 natural gas customers.

The Issue.

Does the Illinois Commerce Commission have authority to require the Illinois Natural Gas Company (Appellant) to construct a pipe line and sell gas to the Central Illinois Public Service Company (Appellee Company)?

Facts of Record.

Appellee Company has supplied gas in Mattoon, Charleston and Paris for more than twenty-five years (R. p. 34). Originally this was artificial gas manufactured at local plants in those cities, but in 1927, to obtain the economies of quantity manufacture in a centralized plant, Appellee Company installed a four-inch main from its Mattoon plant to Charleston and thence the year following to Paris, a total distance of forty miles (R. pp. 36 and 48). In 1929 Appellee Company began obtaining a portion of its artificial gas from the Indiana Consumers Gas and By-Products Company, delivered at the State line by that company through a main owned by it extending from its Terre Haute, Indiana, plant to a point on the State line east of Paris. The following year Appellee Company began serving artificial gas in Effingham, installing a four-inch main

from its Mattoon plant to Effingham for that purpose (R. p. 36).

Appellee Company continued to supply artificial gas to the four cities until August, 1932, when it changed to natural gas procured from the same Indiana Company, and transmitted as the artificial gas had been previously. Approval by the Illinois Commerce Commission of the contract under which this natural gas was obtained was sought by Appellee Company and the cause was heard by the Commission on July 19, 1932, but no order was entered until June 18, 1936, when the Commission refused to approve the contract because of its provisions for heating value and cost, calling attention to the proximity of the natural gas transmission main of the Panhandle Illinois Pipe Line Company (predecessor in ownership of Appellant), and directing Appellee Company to submit such a plan as would adequately provide for Appellee Company's requirements in the above cities (R. pp. 73, 74).

Appellee Company thereupon instituted proceedings before the said Commission with a view to obtaining natural gas from the Panhandle Illinois Pipe Line Company (Appellant's predecessor), but these proceedings were halted by a suit brought in the Federal Court by the Universal Gas Company (successor to Indiana Consumers Gas and By-Products Company) to enjoin Appellee Company from ceasing to receive natural gas from it, and to enjoin the Panhandle Illinois Company from furnishing Appellee Company with natural gas. A decision affirming a lower court judgment holding the contract invalid was rendered by the United States Circuit Court of Appeals for the Seventh District (*Universal Gas Company* v. *Central Illinois Public Service Company and Illinois Natural Gas Company*, 102 Fed. (2) 164), and, upon expiration of period for certiorari, negotiations were begun by Appellee Company with Appellant.

Appellant is the successor in ownership to a portion of the property in Illinois formerly owned by the Panhandle Illinois Pipe Line Company, beforementioned. Like Appellant, the latter was a subsidiary of Panhandle Eastern. On February 23, 1938, it owned and operated all of the property located in Illinois which is now owned and operated by the Panhandle Eastern, and all of the property located in Illinois now owned and operated by Appellant (except subsequent additions in both cases). This Panhandle Illinois Company had for some years prior to that date carried on all operations and transacted all business in Illinois concerning the gas brought to the State line by Panhandle Eastern, including both its transmission across the State of Illinois and the business of supplying gas to all customers in Illinois (R. p. 89). On that date the Panhandle Illinois Pipe Line Company joined with the Appellant in a petition to the Illinois Commerce Commission for an order authorizing the carrying out of a three-party contract providing for the transfer by it of its large transmission main extending across the State and all boosting and other equipment incidental to that main to the Panhandle Eastern; and the transfer to Appellant of all of its remaining property and assets, including all laterals leading from the large main and their incidental equipment and the entire business of supplying natural gas in Illinois (R. pp. 88-107).

In the opening statement made to the Commission in that proceeding by Counsel representing both petitioners (also at the time Counsel for Panhandle Eastern), the purpose of the proceeding was represented to the Commission to be "the separation of the property and business of Panhandle Illinois Pipe Line Company to the end that the property and business which is purely intrastate and of a local utility character, will be owned and operated by the Illinois Natural Gas Company, an Illinois corporation, op-

erated as a public utility in this state, and that the main line and compressor stations not used, useful or necessary in the conduct of a public utility business be transferred to the Panhandle Eastern Pipe Line Company, a Delaware corporation" (R. pp. 15 and 16.)

In that same proceeding Appellant sought an order from the Commission approving a contract between Appellant and Panhandle Eastern for the furnishing by Panhandle Eastern to Appellant of all gas required by Appellant for resale by Appellant to the several distributing companies then, or thereafter to be, served by it.

An order permitting the transfer and approving the contract was entered by the Commission on June 15, 1938 (R. pp. 47, 58) and thereupon the actions authorized by the order were taken and Appellant filed with the Commission its rates, regulations and conditions of service, all of which have been thenceforth adhered to by Appellant (except in the instance here before the Court), and with all of which Appellant admits the Appellee Company will comply in obtaining the service here sought. The installation of the approximately twenty miles of lateral required to serve Appellee Company admittedly is within the service Appellant holds itself out to perform, and the remuneration to be received by it admittedly is compensatory.

The contract between Appellant and Panhandle Eastern is for a period of five years ending June, 1943 and thereafter until canceled on twelve months' written notice (R. pp. 75, 76). It is a formal written instrument, containing sixteen Articles. With certain exceptions as to Industrial customers, and except for *force majeure*, it unqualifiedly binds Panhandle Eastern to supply all Appellant's requirements, even to the extent of itself purchasing from others to do so (R. p. 76). It specifies in detail the quality of the gas, permitting Panhandle Eastern to extract certain hydro-carbons; specifies the per cubic foot thermo-units,

with fixed temperature and pressure for their ascertainment; and fixes limits to impurity and moisture content, and prescribes exact methods for their ascertainment (R. pp. 77, 78).

It also provides in detail for the measurement of the gas, fixing the barometric pressure, the method of obtaining temperature and the specific gravity of the gas for measurement by meters (R. pp. 78, 79). It provides for the installing, reading, cleaning, changing, repairing, inspecting and adjusting of measuring equipment, for freedom thereof from outside influences, gives either party the right to install check meters, fixes percentages of inaccuracy tolerance, provides for monthly testing, outlines the method of estimating the quantity of gas delivered through inaccurate meters, requires the daily reading of meters where practicable and fixes the hour of the day for such readings and provides that all records shall be kept for a period of five years (R. pp. 80, 81, 82). Days of the month are specified for rendering bills and for making payment, and provision made for the correction of possible errors. Places of delivery are expressly stated to be the points of connection between the respective facilities of the two parties (R. pp. 82, 83).

Although Panhandle Eastern transmits the gas in its main at pressures varying from a maximum of 450 pounds to a minimum of 225 to 250 pounds per square inch (R. p. 29), the contract requires Panhandle Eastern to deliver to Appellant at a pressure not to exceed 200 pounds (R. p. 85), Panhandle Eastern warrants the title to all gas delivered to Appellant, and agrees to indemnify Appellant from all damages through failure of such warranty (R. pp. 85, 86).

The contract further provides that upon delivery the Appellant "shall be deemed to be in exclusive control and possession" of the gas and "responsible for any injury or damage caused thereby," and each party agrees to "indemnify and save harmless the other" from all damages

beyond point of delivery (R. p. 85). It prohibits modification of its terms except by subsequent written contract, prevents a waiver of non-performance from constituting a waiver of like future non-performance, and "supersedes and cancels all previous contracts, agreements and understandings between the parties hereto covering the sale and delivery of gas by" Panhandle Eastern "to" Appellant or Appellant's predecessor (R. p. 87). The record contains no evidence of any modifications of the contract's original terms or provisions.

An employee of Panhandle Eastern stationed at Kansas City estimates from day to day from weather reports and reports from Panhandle Eastern's customers the daily volume required to be put into its main at the producing field, and this information is dispatched daily to the field and there used in the regulation of the flow from wells (R. pp. 31, 32).

All gas handled by Appellant is obtained from Panhandle Eastern at the points of delivery specified in the contract (R. p. 27). All of Appellant's facilities, and all of Appellant's business subsequent to the delivery of the gas by Panhandle Eastern to Appellant, are within the State of Illinois (R. p. 28). All sales of gas made by Appellant are made in Illinois and are in accordance with its schedules and rates filed with the Illinois Commerce Commission (R. pp. 2-14). Appellant supplies Appellee Company with gas under these schedules and rates at four other points in the State of Illinois (R. p. 40). All movement of the gas beyond the point of its delivery to Appellant is caused by what remains of the pressure in Panhandle Eastern's main, Appellant, upon receipt of the gas, reducing the pressure at point of delivery (R. p. 22) to what it deems most economical for transmission to its customers, varying at the different points of delivery from 38 pounds to 173 pounds per square inch (R. p. 44).

Appellant delivers the gas to its distributing company

customers at pressures ranging from 15 to 90 pounds per square inch, and the average pressure at which such customers distribute the gas in turn to their customers is 3.47 ounces per square inch (R. pp. 44, 47).

While Appellee Company's four-inch main between Mattoon and Paris was adequate for the transmission from Paris of all artificial gas required at Charleston, Mattoon and Effingham and intermediate communities, the advent of natural gas with its resulting house heating and industrial uses caused such an increase in the requirements for that group that the line has become inadequate (R. p. 37). It will continue for many years to be of sufficient capacity to meet the needs of Charleston and Paris with gas transmitted from Mattoon, but because of Mattoon's greater requirements is already inadequate for that city and Effingham (R. p. 37). This main was installed in 1927, designed to carry not over 100 pounds pressure which was considered high for gas mains at that time. Its maximum pressure for day to day operation should not be over 150 pounds, with occasional maximum pressure of not over 200 pounds, and even at the higher pressure it cannot supply Appellee Company's requirements.

To meet the requirements at Mattoon, Charleston and Effingham with gas transmitted from Paris would necessitate the installation and operation of an additional four-inch main at a cost of over $250,000, besides which Appellee Company would annually incur maintenance, depreciation and other operating charges and expenses (R. p. 37). Also, the gas procured from Appellant would have a higher B. T. U. content and will be furnished at lower rates, which, based on 1938 sales, would enable Appellee Company to furnish gas to its customers in the Mattoon group at a saving to them of approximately $12,000 a year (R. pp. 46, 47). It is, however, estimated that the sales in the Mattoon group for 1938 would have been increased by 20 to 25 per

cent had adequate supply of natural gas been available for Mattoon, Charleston and Effingham (R. p. 37).

The Illinois Commission found Appellant's business subsequent to its purchase and receipt of the gas to be intrastate (R. p. 56), and ordered Appellant to make necessary installations and render the proposed service and that a Certificate of Convenience and Necessity be issued to Appellant for those purposes (R. pp. 57, 58). Application for rehearing by the Commission was made by Appellant and denied, and Appellant appealed to the Circuit Court of Coles County, which upheld the Commission's order. Further appeal was then prosecuted by Appellant to the Supreme Court of the State of Illinois, which affirmed the judgment below. Appellant then prosecuted the present appeal to this Court.

SUMMARY OF ARGUMENT.

I. In so far as is material to the decision of this case, appellant's activities are purely local in character and do not constitute interstate commerce.

(a) The series of transactions by which natural gas is produced in one State, transported to a local company in another, and by it there resold is not to be treated as one indivisible entirety but must be broken down into its component parts and the character of such parts separately determined.

(b) The interstate character of such transmission terminates upon the delivery of the gas to the Appellant in the State of Illinois, and Appellant's subsequent activities, in reselling and delivering such gas to its customers wholly within this State, are purely local in character.

The actual facts in this case are such that appellant's activities are and were intended to be strictly local in character and entirely separate and distinct from the interstate activities of its parent, the Panhandle Eastern Pipe Line Company.

Not only the previous holdings of this Court but the background and express language of the Natural Gas Act, upon which Appellant relies heavily, sustain the above proposition.

(c) The cases relied upon by Appellant are each distinguishable upon their facts; and, although some of the *dicta* seized upon by Appellant appear to give color to its position at first blush, the actual *holdings* and general tenor of the cases sustain Appellees' position.

II. The Illinois Commerce Commission, under the Illinois statute, has jurisdiction over Appellant's activities.

III. The order in question is not repugnant to or in conflict with the Commerce Clause of the Federal Constitution.

Appellant's contentions to the contrary are predicated upon an assumption that its activities, subsequent to its receipt of the gas, are interstate and not intrastate in character. This premise being false, the Appellant's contentions fall.

IV. The order in question is not repugnant to or in conflict with the Natural Gas Act and is entirely consistent with its provisions.

Appellant's argument is based on the assumption that its activities, after receiving the gas, are interstate in character. This being untrue, the argument collapses.

Furthermore, the Natural Gas Act, which vests in the Federal Power Commission control only over such companies as transport natural gas across State lines, provides that the several States shall continue to regulate the local resale and distribution of gas within their respective borders, and sets up extensive provisions looking forward to continued activity on the part of both State and Federal Commissions in this field, each voluntarily co-operating with the others.

It therefore is clear, on the basis of the applicable decisions of this Court and the provisions of the said statute, that the order in question is not repugnant to or in conflict with the Natural Gas Act.

In addition to the purely legal aspects of the problem, it is submitted that the interests of the Nation will best be served by Federal control of such interstate activities as are here carried on by the Panhandle Eastern Pipe Line Company and State control of such local activities as are here carried on by the Appellant, Illinois Natural Gas Company.

ARGUMENT.

I.

Insofar as Is Material to the Decision of This Case, Appellant's Activities Are Purely Local in Character and Do Not Constitute Interstate Commerce.

(a)

The Series of Transactions by Which Natural Gas Is Produced in One State, Transported to a Local Company in Another, and by It There Resold Is Not to Be Treated as One Indivisible Entirety, But Must Be Broken Down Into Its Component Parts and the Character of Such Parts Separately Determined.

The proceedings before the Illinois Commerce Commission here in question in no way sought to invoke, nor was there exercised or attempted to be exercised by the Commission, any jurisdiction over the gas here in question, or over Appellant in any of its operations, transactions or dealings with respect to the gas, until the gas has been received by Appellant in Appellant's laterals at the laterals' connections with Panhandle Eastern's main. The jurisdiction which the Commission exercised in this proceeding is limited to, and only includes, what occurs after the gas has been received by Appellant from Panhandle Eastern at the intake points of Appellant's laterals.

While not expressly so stated, it seems to us evident that the argument advanced by Appellant is based fundamentally upon an assumption that, in determining whether the specific operations and transactions of Appellant which are involved in this proceeding are inter- or intra- state, all of Appellant's operations and transactions, including its purchase, its receipt, its subsequent treatment and its disposal of the gas in question, must be treated as one

single indivisible business entirety, the component parts of which are not permitted to be segregated and considered separately in order to determine in which class, inter- or intra- state, a particular operation or transaction, or series of them, properly belongs; and that therefore, because, prior to the receipt of the gas by Appellant in Illinois, the gas had moved in interstate commerce, all transactions subsequent to the receipt of such gas must also be interstate.

In passing upon questions involving the inter- or intrastate character of gas transported across State lines, this Court has repeatedly, and we believe universally, recognized that the bringing of gas into a State and there disposing of it, all under continuous pressure, may involve operations and transactions of which some are interstate in character while others are intrastate, and in each such instance has determined the inter- or intra- state character of individual component operations and transactions, or series, as separate and independent questions, from the facts surrounding the particular operation or transaction, or series, in question.

Appellees do not at all question the propriety of giving full consideration to all dealings and transactions had by or between Appellant and Panhandle Eastern relative to Appellant's procurement of the gas or relative to its collection, treatment and transmission prior to its being received by Appellant at the intake points of its laterals insofar as those facts may have bearing, if any, in determining whether Appellant's dealings and transactions with respect to the gas subsequent to receiving it constitute inter- or intra- state commerce. Appellees do, however, contend that the inter- or intra- state character of what occurs after Appellant has received the gas is an independent question for independent determination in and of itself, such determination to be arrived at from a consideration of all the facts.

In the case of *Public Utilities Commission* v. *Landon*, 249 U. S. 236, 63 L. ed. 577, 585, 586 (1918), the Receivers of the Kansas Natural Gas Company were bringing gas from Kansas into Missouri and selling it to local Missouri distributing utilities who in turn sold it to Missouri customers, the Receivers receiving in payment a percentage of the distributing companies' revenues. The Missouri Commission claimed jurisdiction to fix the rates which the local companies should both pay and charge for the gas, and on final appeal to this Court it was held that while the dealings and transactions concerning the gas prior to its being received by the distributing companies were interstate, the dealings and transactions concerning it subsequent to such receipt w e intrastate and subject to the State Commission's jurisdiction. This Court in its opinion noted the existence of permanent connections permitting the gas from the Receivers' mains to pass into the mains of the local utilities, from which, in the light of common knowledge, it may we believe be reasonably inferred that the gas travelled continuously under pressure supplied from without the State to the customers of the distributing utilities. Thus, transactions with respect to the same gas, moving continuously from without, to and within the State, were distinguished and considered separately by the Court, and an interstate character found to exist as to one set of transactions, while an intrastate character was determined as to another.

In the case of *Missouri, ex rel. Barrett* v. *Kansas Natural Gas Company*, 265 U. S. 298, 68 L. ed. 1027 (1924), this Court, speaking of gas transmitted in continuous flow from without the State to points of its ultimate consumption within the State, used the following language (loc. p. 1030):

> "With the delivery of the gas to the distributing companies, however, the interstate movement ends.

> Its subsequent sale and delivery by these companies to their customers at retail is intrastate business and subject to State regulation."

In the case of *East Ohio Gas Company* v. *Tax Commission*, 283 U. S. 465, 75 L. ed. 1171 (1931) the East Ohio Company operated local distributing utilities in various communities in Ohio. The gas originated in West Virginia and Pennsylvania and was transmitted by companies in those States to the State line where it passed without interruption into East Ohio's continuations of the transmitting mains and was hence transmitted by East Ohio to East Ohio's distributing systems in various communities. Ownership and possession of the gas thus remained in East Ohio from the State line until it reached the consumers. This Court there held that the transmission of the gas from the wells in West Virginia and Pennsylvania to the ultimate consumers in Ohio need not be treated as one single transaction but could be divided and part held interstate and the rest intrastate. So viewed it upheld a state tax.

In *Southern Natural Gas Corporation* v. *Alabama*, 301 U. S. 148, 81 L. ed. 970 (1936), the Southern Company brought gas from Louisiana and Mississippi into Alabama by continuous pipe line transmission under gas well pressure and sold it in Alabama. The State of Alabama assessed a tax upon the company based on so much of its capital as was employed in that State. This Court, in upholding the tax, divided the transmission of the gas, concluded that at least part of the transmission was intrastate in character and, at page 155, said:

> "While the gas which appellant sold was brought into the State from Louisiana, it appears that appellant carried on in Alabama activities of an intrastate character."

In *Natural Gas Pipe Line Company* v. *Slattery*, 302 U. S. 300, 82 L. ed. 276 (1937), the appellant company was an

affiliate, as defined by the Illinois Public Utilities Act, of the Chicago District Pipe Line Company, an Illinois corporation, and as such was ordered by the Illinois Commerce Commission to make available to the Commission certain of its accounts and records relating to transactions between it and the District Company, for use in a proceeding before the Commission to determine proper rates to be charged by the District Company. The Pipe Line Company was a Delaware corporation transmitting gas from Oklahoma into Illinois, where it sold and delivered the gas to the District Company. The District Company then sold the gas to other companies which in turn distributed it to Illinois consumers. Notwithstanding the interstate character of the transactions between the District Company and the Natural Gas Pipe Line Company in the District Company's procurement of the gas, this Court upheld the action of the Illinois Commission as a proper exercise of its jurisdiction in determining intrastate rates to be applied by the District Company in its disposal of the gas to the Illinois distributing companies.

Even the provisions of the Natural Gas Act, upon which Appellant relies heavily, reflect the soundness of our contention that the transmission of natural gas from the original sources of production to the ultimate consumers need not be treated as one indivisible transaction but may be divided and segregated so that such transmission may well be held to be interstate in character up to a certain point and intrastate beyond that point, when it is said, in Section 1 (b):

> "The provisions of this chapter shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial or any other use, and to natural gas companies engaged in such transportation and sale, but shall not apply to any other transportation or

sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas."

(b)

The Interstate Character of Such Transmission Terminates Upon the Delivery of the Gas to the Appellant in the State of Illinois and the Appellant's Subsequent Activities, in Selling and Delivering Such Gas to Its Customers Wholly Within This State, Are Purely Local in Character.

We deem it so well established by the decisions of this Court as to need no citation of authority, that neither the question of what constitutes engaging in interstate commerce, nor the question of what affects interstate commerce to an extent requiring Federal supervision, are to be determined by set legal formula, but are to be determined from the facts as each individual case arises; and that with respect to what affects interstate commerce, there is a "necessary well established distinction between direct and indirect effects," the latter affording no ground for Federal control.

Appellees readily concede that up to the point where the gas is delivered to Appellant in Illinois the transmission of such gas is a movement in interstate commerce. Appellees respectfully suggest, however, that the character of those prior dealings and transactions is not the question at issue in this case. While those prior dealings and transactions may be considered in determining the question actually at issue, the question itself is the character of Appellant's dealings and transactions subsequent to its receiving the gas.

As we read the record, we believe the following state-

ments may be said fairly to summarize the facts from which this issue is to be determined.

1. Except for subsequent retirements and additions, all of the property now owned and operated respectively by Appellant and Panhandle Eastern was owned and operated on or shortly before June 30, 1938 by the Panhandle Illinois Pipe Line Company, by whom it was at about that time disposed of to Appellant and Panhandle Eastern, respectively, the latter taking over the large transmission main extending across the State and its appurtenant equipment, and Appellant all the remaining property and equipment, all of which was located in Illinois.

2. Prior to these transfers Panhandle Illinois Pipe Line Company had carried on both the business of transporting gas into Illinois through the large transmission main, and the business of disposing of the gas to Illinois consumers, and at the time of the transfer of the property these businesses were also transferred to Panhandle Eastern and Appellant, respectively.

3. The purpose of these transfers of property and business was stated to the Illinois Commerce Commission by Counsel for both Appellant and the then owner Company, in a proceeding brought before that body to obtain approval of the transfers, to be "the separation of the property and business of Panhandle Illinois Pipe Line Company to the end that the property and business which is purely intrastate and of a local public utility character, will be owned and operated by Illinois Natural Gas Company, an Illinois corporation, operated as a public utility in this State, and that the main line and compressor station not used, useful or necessary in the conduct of a public utility business, be transferred to the Panhandle Eastern Pipe Line Company, a Delaware corporation."

4. In the same proceeding last referred to, there was presented to and approved by the Illinois Commerce Commission a contract between Appellant and the Panhandle Eastern, obligating Panhandle Eastern to supply gas for all Appellant's requirements.

5. All gas in any way dealt with by Appellant is

received by Appellant from Panhandle Eastern under this contract at the points of connection of Appellant's laterals with Panhandle Eastern's mains, where warranted title and complete possession and responsibility pass to Appellant.

6. The contract is formal and complete, and employs extensive detail in fixing the respective rights and obligations of the parties usual to contracts arrived at after arm's length bargaining.

7. All of the physical property in any way devoted to the treatment and handling of the gas from the time of its receipt by Appellant is owned and operated by Appellant and is located in Illinois.

8. All of the physical treatment and handling of the gas from the time of its receipt by Appellant are by Appellant and occur entirely within Illinois. No movement outside the State takes place, nor does the record show that any such movement was ever contemplated.

9. Immediately upon receiving the gas, Appellant reduces the pressure, through equipment owned and operated wholly by itself, to that it deems best suited to its own economies.

10. Appellant disposes of all the gas in accordance with rate schedules filed with the Illinois Commerce Commission.

11. Aside from billing and payment for the gas, the only facts of record in any way pertaining to interstate commerce subsequent to Appellant's receiving the gas are that the movement of the gas in Appellant's laterals and thence to consumers' burners is caused by what remains of the pressure in Panhandle Eastern's mains after reduction by Appellant at the points of connection and that Appellant's employees inform Panhandle Eastern's dispatcher at Kansas City of Appellant's requirements.

12. The record contains no testimony tending to show that Appellant's compliance with the Commission's order would in any way affect Panhandle Eastern's transmission of the remaining gas transmitted by it into Illinois, or across Illinois, or Panhandle Eastern's ability to supply gas to its interstate customers.

This Court has already foreclosed any claim that Appellant's dealings and transactions concerning the gas subsequent to receiving it are given even color of engaging in interstate commerce by the fact that Appellant disposes of the gas to distributing companies who in turn distribute it to consumers.

In the case of *Natural Gas Pipe Line Company* v. *Slattery*, 302 U. S. 300, 82 L. ed. 276, which we have already drawn to the Court's attention, the jurisdiction of the Illinois Commission over the Natural Gas Pipe Line Company necessarily depended upon the Commission's having jurisdiction over the District Pipe Line Company, an affiliate. The District Pipe Line Company received its gas in Illinois after transportation from without the State, and then sold and delivered it to distributing companies within Illinois, by whom it was in turn distributed to consumers, just as Appellant is doing here. With respect to the inter- or intra- state character of these dealings and transactions of the District Company this Court, in holding the District Company to be engaged in intrastate commerce, said (loc. p. 277):

> "Appellant, a Delaware corporation, sells in Illinois natural gas, which it transports through its pipe lines from Oklahoma to points in Illinois where, pursuant to a long term contract, it delivers the gas to the District Company, an Illinois corporation. The latter is engaged in intrastate commerce in Illinois where it sells the gas, which it purchases from appellant, to other companies which in turn distribute the gas to consumers within the state."

In that case the appellant brought the gas across State lines into Illinois where it sold and delivered it to the District Company and it was one of its contentions that the Commission's order was a step toward unconstitutional action. As to this, it was pointed out in the Opinion that the proceeding pending before the Commission concerned

only the rates charged by the District Company in its disposal of the gas, and that the Commission could make no order with respect to the importing company's rates or its contract with the District Company, and that it was not even contended that the Commission had or threatened to make any order in any way affecting the rates or contract between the Pipe Line Company and the District Company.

As in that case, the Commission in the case here before the Court dealt in no manner with the Panhandle Eastern or its contract with Appellant, but confined its order to what transpired after Appellant's receipt of the gas. While the Opinion does not set forth details of the District Company's property, operations and its contract with the Natural Gas Pipe Line Company to the extent that Appellant's dealings and transactions and its contract with Panhandle Eastern are disclosed in this case, there is, we respectfully suggest, sufficient in the opinion to make clear, in the light of common knowledge of natural gas transmission and operation, a substantially exact parallel between the District Company and Appellant in respect to the respective inter- or intra-state character of their dealings and transactions.

The case of *J. Bacon & Sons* v. *Martin*, 305 U. S. 380, 83 L. ed. 233, 235 (1939), was an appeal from a judgment of the Circuit Court of Appeals of Kentucky, dismissing an action brought to have declared invalid a statute imposing a tax upon "the receipt of cosmetics in the State by any Kentucky retailer," as applied to cosmetics brought into Kentucky from without the State.

The Kentucky Court had construed the word "receipt" as used in the statute as relating to dealings and transactions concerning the cosmetics which occurred only *subsequently to their having been received* in Kentucky by the taxpayer, and this Court held that under that interpretation of the word the appeal should be dismissed for want of a Federal question. As in that case, the Commission, in the

case here before the Court, dealt only with what transpired after the imported commodity had been received.

In *Atlantic Coast L. R. Co.* v. *Standard Oil Co.*, 275 U. S. 257, 72 L. ed. 270 (1927), this Court noted "purposes and business" as factors for consideration in determining whether a given transaction was inter- or intra-state. The Standard purchased, title passing upon delivery, oil brought by the seller in ships from Tampico and Louisiana and delivered by seller's ships' pumps into Standard's storage tanks at Port Tampa and the St. John's River, Florida. Simultaneously with the movement into Standard's tanks by the ships' pumps, a portion of the oil moved from Standard's tanks into Standard's tank cars for further shipment to points in Florida, and it was contended by the railroad that these tank car shipments were a portion of a complete interstate movement and therefore governed by interstate rates. The action was brought by the Standard to enforce application of intra-state rates, and this Court held that the tank car movements were intra-state notwithstanding the simultaneous movement from ship to reservoir and reservoir to cars. The Court there said:

> "The argument is made that these are continuous streams of oil from Baton Rouge or Tampico into bulk stations in the interior of Florida where it is sold to the customers of the plaintiff, and that its interstate character continues through that entire passage. It may be, as suggested in the argument, that oil is being discharged into plaintiff's receptacles for its storage at the same time that it is being discharged from the storage tanks into storage tank cars for its distribution, but that is not at all inconsistent with its being a closing of an interstate or foreign transportation and a beginning of intrastate distribution for the purposes and business of the plaintiff."

In *Southern Natural Gas Co.* v. *Alabama*, 301 U. S. 148, 81 L. ed. 970, 975 (1936), the position of the Southern Company was akin to that of the Panhandle Eastern in the case here before the Court. The Southern Company brought

gas from Louisiana and Mississippi into Alabama by continuous pipe line movement under gas well pressure and there itself sold and delivered the gas direct to four purchasers. The State of Alabama imposed upon the Southern Company a franchise tax measured by the total amount of capital employed by the Company in that State, from all of which the Company claimed exemption on the ground that all was devoted to interstate business. Three of the purchasers were Alabama utility companies to whom the Southern Company itself directly sold and delivered the gas, just as Panhandle Eastern sells and delivers to Appellant.

The fourth customer was the Tennessee Coal, Iron & R. R. Co., which also purchased direct from the Southern Company and to whom the Southern Company itself delivered the gas at three separate steel plants under continuous movement from the gas fields through service lines installed by the Southern Company from its main line to points of delivery. Notwithstanding this was done by the Southern Company which itself brought the gas in the State, it was held to constitute intrastate commerce. As one of the bases for the holding, it was said in the opinion that

> "under its contract with the Tennessee Company, which brought for consumption by itself and its subsidiaries in industrial plants, appellant" (Southern Company) "agrees not simply to install metering stations for measuring the amount of gas delivered, but to establish the requisite lines running to the described plants in order that the gas might be furnished in a manner suited to the consumers' needs."

In that case the importing company was itself doing exactly what Appellant is doing in the case here before the Court, except that Appellant furnishes the gas to other companies who in turn supply it to consumers, which under the holding in the case of *Natural Gas Pipe Line Co.* v. *Slattery, supra,* is a circumstance in no way affecting the intra-state character. Clearly, we submit, if such action on

the part of the importer itself is intrastate, then like action by an independent business entity whose purposes and business after receiving the gas are confined solely to business within the State of Illinois, must equally be intrastate.

In *Schechter* v. *United States,* 295 U. S. 495, 79 L. Ed. 1570, 1587 (1935), poultry was shipped from without the State into New York City and there for the most part handled by commission men acting as agents for the out-of-state shippers, making the transactions thus far tantamount to the out-of-state shipper shipping to himself in New York City. Through the commission men the owner then sold to the Schechter Company either at the railroad terminals in New York City or at the Washington Market, and the Schechter Company then trucked the poultry to the slaughterhouse where it was immediately slaughtered and sold to retail poultry dealers and butchers, who in turn sold directly to consumers.

The relationship of the Schechter Company to this poultry thus seems to us to be parallel with the relationship of the Appellant to the gas here in question. With the gas, Panhandle Eastern. the owner, transmits it to itself in Illinois where it sells and delivers it to Appellant; Appellant receives it from Panhandle Eastern's mains into its own laterals, immediately reduces its pressure, and thence transmits it through its lateral to a point where it further reduces it just before delivery to Appellee Company; and Appellee Company in turn sells it to the ultimate consumer. With the poultry, the out-of-state owners shipped to their agents (themselves) in New York City, and Schechter bought from these shippers at the railroad terminal and transported the poultry a short distance to his slaughterhouse, where he slaughtered and then sold the poultry to retail dealers and butchers, who in turn sold to the consumers. In holding Schechter not to be engaged in interstate commerce, the Court said (L. Ed. loc. p. 1587):

"The undisputed facts thus afford no warrant for

> the argument that the poultry handled by defendants at their slaughterhouse markets was in a *'current'* or *'flow'* of interstate commerce and was thus subject to congressional regulation. The mere fact that there may be a constant flow of commodities into a State does not mean that the flow continues after the property has arrived and has become commingled with the mass of property within the State and is there held solely for local disposition and use."

The fact that Appellant reduces the pressure of the gas, while not controlling, is among those to be considered (*East Ohio Gas Company* v. *Tax Commission,* 283 U. S. 465, 75 L. ed. 1171, and *Southern Natural Gas Co.* v. *Alabama,* 301 U. S. 148, 81 L. ed. 970).

Appellant receives the gas at the points of connection at not to exceed 200 pounds pressure, and immediately reduces this pressure to others varying from 38 to 173 pounds. Each reduction is made by Appellant itself, after having received the gas. The purpose of the reductions is undisputed. They are made to effect economy in Appellant's own operations, and they vary to meet Appellant's needs in its individual laterals. They are solely for Appellant's own benefit and convenience, and their only effect upon interstate transmission of the gas is to eliminate a portion of the pressure employed in the interstate movement. In so far as disclosed by the record they are made solely for and in the furtherance of Appellant's "purposes and business" in its disposal of the gas within Illinois.

Just as reduction in pressure, while entitled to consideration, is not a controlling factor, so also continuous movement of the gas through Appellant's laterals under pressure supplied in its interstate transmission (one of the only two factors which in our opinion pertain to interstate dealings with the gas after its receipt by Appellant), while entitled to consideration, is not a controlling factor. That it is equally as compatible with intrastate movement as with interstate, has been repeatedly recognized by the de-

cisions of this Court, among which are those in some of the cases cited by Appellant itself.

In the case of *East Ohio Gas Company* v. *Tax Commission, supra,* gas brought by the East Ohio Company from West Virginia and Pennsylvania into Ohio and thence into the local mains of the East Ohio Company, all under continuous out-of-state pressure, was held to be interstate to the local mains and intrastate thereafter.

In the case of *Public Utilities Commission* v. *Landon,* 249 U. S. 236, 63 L. ed. 577, gas brought into the State of Missouri by the Kansas Natural Gas Company and there sold to a Missouri public utility, moving continuously from without the State to and through the mains to the customers of the Missouri utility, was held to move in inter- and intra- state commerce.

In *Missouri ex rel. Barrett* v. *Kansas Natural Gas Company,* 265 U. S. 298, 68 L. ed. 1027, gas brought into Missouri by the Kansas Natural Gas Company and there delivered to Missouri utilities under continuous pressure from without the State was held to be interstate in its movement to the distribution systems of the Missouri utilities and intrastate in its movement thereafter.

In *Southern Natural Gas Corporation* v. *Alabama,* 301 U. S. 148, 81 L. Ed. 970, gas brought from without the State into Alabama by Southern Corporation and there delivered to steel plants under continuous pressure from without the State to and through service lines supplying the plants, was held to include both inter- and intra- state movements.

While not claiming for it any great weight, we do venture to suggest to the Court that, as between reduction in pressure and continuous movement, the former may in this case properly be regarded as the more influential. It is an action involving actual expense and effort put forth by Appellant solely in the interests of what takes place in

that part of its business occurring after it has received the gas, while the use of the out-of-state pressure calls for no effort or expense on its part.

As to the forwarded information concerning the probable needs of Appellant's customers, the actual use made of the information is by Panhandle Eastern alone, in determining whether that Company can meet its contract obligations to supply Appellant's requirements from its own wells, and if so from what wells and in what quantities from each, or whether it must purchase gas from others which its contract obligates it to do if the supply from its own wells is insufficient. The direct relation of the information is to the contract obligation, and the needs of Appellant's customers constitute only the measure of the obligation.

Under the decisions of this Court there can be no question but that in the continuous movement of gas across State lines to the point of its ultimate consumption there may well be a point during the movement at which, for all purposes of determining inter- or intra- state character, the interstate movement comes to what, in respect of usual commodities, this Court has repeatedly termed "at rest"; where the interstate movement of the gas ends, and and its intrastate movement begins. Nor can there be any question under the decisions of this Court that because the "at rest" stage in the case of gas is necessarily theoretical, it is any less potent in establishing the end of interstate and the beginning of intrastate commerce as to gas, than is the actual "at rest" of the more solid articles of merchandise and commerce.

In the case of *Chicago M. & St. P. R. Co.* v. *Iowa*, 233 U. S. 334, 58 L. ed. 988, the "at rest" situation was that coal shipped from Illinois into Iowa remained upon the Iowa interchange track of the carrier while the shipper notified the carrier that it desired further shipment with-

in Iowa, which was then made by the carrier in the same car in which it was brought from Illinois. As to this the Court said (loc. pp. 992, 993):

> "But the fact that commodities received on interstate shipments are reshipped by the consignees, in the cars in which they are received, to other points of destination, does not necessarily establish a continuity of movement, or prevent the reshipment to a point within the same state from having an independent and intrastate character. *Gulf, C. & S. F. R. Co.* v. *Texas*, 204 U. S. 403, 51 L. ed. 540, 27 Sup. Ct. Rep. 360; *Railroad Commission* v. *Worthington*, 225 U. S. 101, 109, 56 L. ed. 1004, 1008, 32 Sup. Ct. Rep. 653; *Texas & N. O. R. Co.* v. *Sabine Tram Co.*, 227 U. S. 111, 129, 130, 57 L. ed. 442, 449, 450, 33 Sup. Ct. Rep. 229. The question is with respect to the nature of the actual movement in the particular case; and we are unable to say upon this record that the state court has improperly characterized the traffic in question here. In the light of its decision, the order of the Commission must be taken as referring solely to intrastate transportation originating at Davenport."

Bearing in mind that the sale of the gas by Appellant to other utilities rather than directly to consumers does not of itself in any way militate against the intrastate character of its dealings and transactions subsequent to its receiving the gas, as was held by this Court in *Natural Gas Pipe Line Co.* v. *Slattery, supra,* we respectfully and most earnestly suggest to the Court that the facts in the case here at issue manifest Appellant's business subsequent to its receiving the gas to be in intra- and not interstate commerce, under either of the two major tests laid down by this Court for the determination of such distinction.

The undisputed facts of record establish that after receiving the gas, all of Appellant's dealings and transactions with respect to it, including sole ownership of all property and its complete control and entire operation, all

physical treatment of the gas, and all commercial activities with respect to it, are local to the State of Illinois, and that it is therefore the "local interest" which is paramount.

These undisputed facts also establish that the "purposes and business" of Appellant subsequent to its receiving the gas are confined solely to transactions and dealings all of which are within the State of Illinois. The purposes were declared before the Illinois Commission at the very beginning of Appellant's activities, and have ever since been strictly adhered to in the carrying on of the entire business which it transacts after receiving the gas. There is a complete absence from the record of any fact tending to show that throughout the conduct of its entire business subsequent to receiving the gas, there has been any departure from its declared purposes.

As even a cursory review of Appellant's brief will disclose, much of its argument is predicated upon the provisions of the Natural Gas Act and its legislative background. While it is our position that the Congress was without power to legislate with regard to intrastate commerce, it is also our contention that the background and language used in that Act demonstrate the soundness of our contention that not only is the transmission of natural gas susceptible of division into distinct parts, some interstate and some intrastate, but that the interstate character of such transmission of gas terminates upon the delivery of the gas to the Appellant within the State of Illinois, and that Appellant's subsequent activities, in selling and delivering such gas to its customers wholly within the State of Illinois, are purely local in character.

When carefully examined it will be seen that the Natural Gas Act not only does not attempt to regulate intrastate commerce but that it is so drawn as to leave the States free to regulate all sales and deliveries of natural

gas within their borders, subsequent to the original delivery of such gas by the interstate pipelines without regard to whether or not, under other acts, some sales might be considered interstate in character.

The limitations and exclusions of the Natural Gas Act are as follows:

> SECTION 1 (b). "The provisions of this Act shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural-gas companies engaged in such transportation or sale, but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas."
>
> SECTION 2 (6). " 'Natural-gas company' means a person engaged in the transportation of natural gas in interstate commerce, or the sale in interstate commerce of such gas for resale."
>
> SECTION 2 (7). " 'Interstate commerce' means commerce between any point in a State and any point outside thereof, or between points within the same State but through any place outside thereof, but only insofar as such commerce takes place within the United States."

It is our position that the Natural Gas Act expressly leaves to the several States the power and right to control and regulate the sale and distribution of natural gas within their respective borders once the gas has left the interstate mains (here the mains of the Panhandle Eastern).

This interpretation is confirmed by other sections of the said Natural Gas Act which demonstrate very clearly that the Congress intended that the transmission of gas from the wells to the ultimate consumers was to be controlled in part by the Federal Power Commission and

in part by the various State Commissions, when it provided as follows:

> SECTION 5 (b): "The Commission upon its own motion or upon the request of any State Commission, whenever it can do so without prejudice to the efficient and proper conduct of its affairs, may investigate and determine the cost of the production or transportation of natural gas by a natural-gas company in cases where the Commission has no authority to establish a rate governing the transportation or sale of such natural gas."
>
> SECTION 9 (b). "The Commission, before prescribing any rules or requirements as to accounts, records, or memoranda, or as to depreciation or amortization rates, shall notify each State Commission having jurisdiction with respect to any natural-gas company involved and shall give reasonable opportunity to each such Commission to present its views and shall consider such views and recommendations."
>
> SECTION 17 (b). "The Commission may confer with any State Commission regarding rate structures, costs, accounts, changes, practices, classifications, and regulations of natural-gas companies; and the Commission is authorized, under such rules and regulations as it shall prescribe, to hold joint hearings with respect to any matter with respect to which the Commission is authorized to act. The Commission is authorized in the administration of this chapter to avail itself of such cooperation, services, records, and facilities as may be afforded by any State Commission."

The Resolution adopted in 1935 by the National Association of Railroad and Utilities Commissions and presented to a Congressional Committee, quoted at pages 57 and 58 of Appellant's brief, further confirms the soundness of our position when it recommended that the then proposed Act

> "• • • be so drawn as in no way to limit or impair the power of the states to regulate intrastate and local service and the rates applicable thereto; • • •."

We therefore submit that the interstate character of the transmission of the gas terminates upon its delivery to the Appellant in the State of Illinois and that Appellants subsequent activities, in selling and delivering such gas to its local customers wholly within the State of Illinois, are purely local in character.

(c)

The Authorities Cited by Appellant Do Not Support Its Contentions and Are Consistent With the Above Propositions.

In contending that subsequently to its receipt of the gas Appellant is engaged in interstate commerce, Appellant claims an analogy between the facts here before the Court and those passed upon in certain decisions of this Court, which in our opinion is unwarranted.

In the first of these cases, *Peoples Natural Gas Company* v. *Public Service Commission,* 270 U. S. 552, 70 L. Ed. 726, the gas company involved owned and operated a pipe line from the state line to various communities in the State of Pennsylvania, in which pipeline gas from two separate and distinct sources was transported. Part of this gas was purchased in the State of West Virginia and part of it was produced locally in Pennsylvania. The Pennsylvania commission ordered the company to furnish gas to a certain local utility and the company appealed. It appeared of record that although gas from within the state and from without the state was commingled the proportions of each were known and that the volume of gas produced locally was in excess of that required by the company to comply with the Commission's order.

This Court therefore affirmed the order of the local commission, holding that the order in question did not affect interstate commerce. Thus the actual *holding* in the case

does not support appellant's position. It is only certain *dicta* of the Court that are seized upon by counsel as appearing to assist them. It is also interesting and material to note that in the cited case no reduction in the pressure of the gas was affected upon the delivery of such gas to the company affected by the order.

In the case of *East Ohio Gas Co.* v. *Tax Commission*, 283 U. S. 405, 75 L. Ed. 1171, also cited by Appellant, the Gas Company was assessed a tax based upon all of its sales of gas in that state even though 75% of the gas so sold by it in that state had been produced in other states and had admittedly moved in interstate commerce. The Gas Company sought to enjoin the tax in question and a three judge court sustained the state tax and dismissed the complaint. On appeal to this Court the decree was affirmed on the ground that:

> "The amounts were calculated on gross receipts derived wholly from appellant's intrastate business notwithstanding the gas used had moved in interstate commerce" (loc. p. 472).

It may thus be readily seen that in so far as the actual *holding* of this Court in the cited case is concerned it is contrary to Appellant's position here. It should also be noted that this Court, in addition to the language cited by Appellant at page 19 of its brief, said at, page 471:

> "It follows that the furnishing of gas to consumers in Ohio municipalities by means of distribution plant to supply the gas suitably for the service for which it is intended is not interstate commerce but a business of purely local concern exclusively within the jurisdiction of the State."

At pages 471 and 472, this Court, in discussing two of its earlier cases, viz.: *Public Utilities Comm.* v. *Landon*, 249 U. S. 236, 63 L. Ed. 577, and *Missouri* v. *Kansas Gas Co.*, 265 U. S. 298, 68 L. Ed. 1027, went on to say:

> "In the former the court said (p. 245): 'Interstate

movement (of natural gas being transported from State to State) ended when the gas passed into local mains.' In the latter, it was said (p. 308): 'With the delivery of the gas (transported from one State to another) to the distributing companies • • • the interstate movement ends. Its subsequent sale and delivery by these companies to their customers at retail is intrastate business and subject to state regulation. • • • In such case the effect on interstate commerce, if there be any, is indirect and incidental • • • (p. 309). The business of supplying, on demand, local consumers is a local business, even though the gas be brought from another state and drawn for distribution directly from interstate mains; and this is so whether the local distribution be made by the transporting company or by independent distributing companies. In such case the local interest is paramount, and the interference with interstate commerce, if any, indirect and of minor importance' • • •."

We submit that the cited case, taken as an entirety, supports the Appellees' and not the Appellant's contentions in the case at bar.

In the case of *Public Utilities Commission* v. *Landon*, 249 U. S. 236, 63 L. ed. 577, also cited by Appellant, the gas company collected gas in Kansas and Oklahoma and delivered it by pipe line to customers in Kansas and Missouri. The public service commissions of Kansas and Missouri undertook to regulate gas rates in their respective States and the gas company sought to enjoin their doing so. The trial court enjoined the said commissions and the defendant commissions appealed to this court, which reversed and remanded the case with instructions, holding that the challenged orders did not affect interstate commerce and that the receivers of the gas company were in no position to complain. Certainly this *holding* does not support Appellant's contentions here.

It should also be here noted that in reaching such a result, this Court, at page 245, said:

> "But in no sense can it be said, under the facts here disclosed, that sale and delivery of gas to their customers at burner-tips by the local companies operating under special franchises constituted any part of interstate commerce. The companies received supplies which had moved in such commerce and then disposed thereof at retail in due course of their own local business • • • Interstate commerce is a practical conception and what falls within it must be determined upon consideration of established facts and known commercial methods. • • • Interstate movement ended when the gas passed into the local mains. • • •."

In the case of *Southern Gas Corp.* v. *Alabama*, 301 U. S. 148, 81 L. ed. 970, a tax was imposed by the State of Alabama upon the gas company based on the capital employed in that State. The Supreme Court of Alabama upheld the tax and this court, on further appeal, affirmed the decision of the State court. Obviously this *holding* in no way assists Appellant here. In reaching its conclusion, this Court, at pages 154 and 155, said:

> "From the agreed facts we are unable to conclude that the business thus conducted in Alabama was entirely an interstate business. While the gas which appellant sold was brought into the State from Louisiana, it appears that appellant carried on in Alabama activities of an intrastate character. • • • We perceive no essential distinction in law between the establishment of such a local activity to meet the needs of consumers in industrial plants and the services to consumers in the municipalities which was found in the Ohio case to constitute an interstate business. As was said in that case: 'The treatment and division of the large volume of gas is like the breaking of an original package, after a shipment in interstate commerce, in order that its contents should be treated, prepared for sale and sold at retail."

It should be noted in this connection that Appellant admittedly serves not only various public utilities located throughout the State of Illinois but also serves various industrial customers located in the State of Illinois directly and without the intervention of any intermediate distributing agency (see Appellant's Brief, p. 4, R. 29).

The case of *National Labor Relations Board* v. *Central Missouri Telephone Company*, 115 Fed. (2d) 563, is too far afield to be of any assistance to the Appellant. There the National Labor Relations Board sought an order in the Circuit Court of Appeals for the 8th Circuit enforcing its order directing a telephone company located in the State of Missouri to cease and desist from certain unfair labor practices.

It is well recognized that because of the general scope of this type of social legislation the courts have viewed such enactments liberally to accomplish the admittedly proper end which the Congress sought to reach. Such a situation is not analogous to the facts in the case at bar. It should also be noted that although all of the respondent's lines in the cited case were located within the State of Missouri such lines were directly connected with the Bell System in other states of the Union and were frequently utilized in sending messages in and out of that State. Such lines therefore were in fact but integral parts of a unified interstate system over which messages between persons in different states could be sent.

In the case of *United States* v. *Erie R. Co.*, 280 U. S. 98, 74 L. Ed. 187, also cited by Appellant, the transportation of the wood pulp within the State of New Jersey was held to be in interstate commerce on the express ground that: "the broker acts only as agent (of the ultimate consignee) and that from the time that the pulp is put aboard the steamer, there is a continued intent that it should be transported to Garfield (its ultimate destination)." The Court

also there stated that there was "ample evidence" to sustain that finding.

The cited case is readily to be distinguished from the case at bar in that, among other things, there is no allegation or evidence in this case that the Appellant acts as agent for its customers or for the Appellee.

Counsel also cites the case of *United States* v. *Rock Royal Co-Operative*, 307 U. S. 533, 83 L. Ed. 1446, which involved an order issued by the Secretary of Agriculture under the Agriculture Marketing Agreement Act of 1937. This case, like the cited *National Labor Relations Board* v. *Central Missouri* case, is too far afield to be of any real assistance here. As in the last named case, the broad economic and social scope of the Act in question has led our courts to take a liberal view of the jurisdictional features of such situations. Such a case is not analogous to such a case as is here before the court. In the cited case it should also be noted that the local sales were merely a step in the subsequent interstate flow of the products in question. Such is not the case here. While Appellant argues that this case conversely supports its position here, we submit that the true converse would be that local sales following interstate sales are intrastate sales, as the cases clearly hold.

Another case cited by Appellant is that of *Carson Petroleum Co.* v. *Vial*, 279 U. S. 95; 73 L. Ed. 626. In that case the oil shipments did not originate in Louisiana but were merely in that State on their way from another state to a foreign country. There this Court held that under such circumstances the State of Louisiana could not tax them. Neither this holding nor the language used by this Court assists Appellant's position here. Such a case cannot possibly aid Appellant unless it is assumed that the Appellant acts merely as an intermediate convenience in a purchase and delivery of gas directly from the Panhandle

Eastern to the Appellee and other local Illinois customers. Even then it should be noted that it is merely a converse proposition which would not be applicable unless the gas was transported out of the State of Illinois after its receipt here, which is not true.

In the case of *State Tax Commission* v. *Interstate Gas Company*, 284 U. S. 41, 76 L. Ed. 156, also cited by Appellant, the Gas Company collected gas in the State of Louisiana and transported this gas by high pressure line through the State of Mississippi back to Louisiana where almost its entire output was sold. A fraction of one percent of the gas was sold in the State of Mississippi, the deliveries being affected from the high pressure main passing through that State, although pressure was reduced in making such delivery. It is obvious that the cited case would only be analogous should the Illinois Commission attempt to assert authority over the Panhandle Eastern Company where it delivers its gas to the Appellant.

Appellant also cites the case of *Public Utilities Comm.* v. *Attleboro Steam & Elec. Co.*, 273 U. S. 83, 71 L. Ed. 549. There the Public Utility Commission of Rhode Island attempted to increase the rate to be changed by a Rhode Island electric generating company on current delivered by it to a utility located in the State of Massachusetts. Obviously the effect of the order was to regulate the price of electricity in another state. To make the facts in the case at bar conform to those in the cited case the State of Texas would have to attempt to regulate the prices to be charged by the Panhandle Eastern Company to customers in states other than Texas. The case bears no analogy to the case at bar. It is interesting to note that, even the facts as so presented, Mr. Justice Brandeis dissented on the ground that the business was primarily intrastate and not interstate in character.

The case of *Western Union Telegraph Company* v. *Fos-*

ter, 247 U. S. 105, 62 L. Ed. 1006, also cited by Appellan is likewise not in point. There, as this Court express held, the ultimate recipients of the messages were fully d termined before the messages were originally dispatch in the foreign state and once commenced the message w conveyed without interruption in interstate commerce. the case here before this Court the Panhandle Eastern Co pany has no control whatsoever over the persons to who Appellant may chose to sell the gas after it has once be delivered to the Appellant in Illinois. It is specifical provided in the contract between the Panhandle Easte Company and the Appellant that once the gas is deliver to the Appellant the latter "shall be deemed in exclusi control and possession" of such gas, and "responsible f any injury or damage caused thereby." Thus it ma readily be seen that the *Foster* case is not analogous the case at bar.

The case of *In Re Billings Gas Company*, 35 P. U. (N. S.) 321, is also cited by the Appellant. It does n appear that in that matter the pressure was reduced whe the Ohio Oil Company delivered the gas to the Billing Gas Company at the state line and it also seems that th only real question actually presented to the Commissio was whether the companies in question were to be require to file reports covering their entire business with th Federal Commission. No question was presented as t the rights of the several states, in which these companie operated, to regulate or tax them. It should further b noted that the cited decision is nothing more than a Com mission's opinion in a case only vaguely analogous to th case at bar. We submit that the opinion of the Illinoi Commerce Commission, based on the actual facts of th case here at bar and already affirmed by the Suprem Court of Illinois, is entitled to more weight.

The last case cited by Appellant on this point is that o *Panhandle Eastern Pipe Line Co.* v. *Public Service Com*

mission, et al., 93 S. W. (2d) 675. In that case the Missouri Public Service Commission purported to order the Panhandle Eastern Pipe Line Company itself to furnish gas to the City of Fulton, Missouri. This order was held void by the Supreme Court of Missouri. In order to present a similar situation in the case at bar the Illinois Commerce Commission would have to order Appellant's parent company, Panhandle Eastern, to itself deliver gas to the Appellee Company. This the Illinois Commission has not attempted to do. Properly understood the cited case is not relevant or helpful in the proper determination of the case at bar.

Concluding this subdivision of our brief, we submit that the authorities cited by Appellant do not support its contention and are consistent with our contention that the interstate character of the transmission of the gas terminates upon its delivery to the Appellant in the State of Illinois, and that the Appellant's subsequent activities in selling and delivering such gas to its local customers wholly within the State of Illinois, are purely local in character.

II and III.

The Illinois Commerce Commission Has Jurisdiction, Under the Illinois Commerce Commission Act, Over Appellant's Activities.

The Order in Question Is Not Repugnant to or in Conflict With the Commerce Clause of the Federal Constitution.

Appellant's contention under Point II of its brief that the Illinois Commerce Commission has no jurisdiction over Appellant's activities because of a provision of the Illinois Statute creating said Commission which states that its provisions shall not be applicable to interstate com-

merce, and Appellant's further contention under Point II of its brief that the order in question is repugnant to an in conflict with the Commerce Clause of the Federal Co stitution, are each predicated upon Appellant's primar assumption that in its activities within the State of Illi nois subsequent to its receipt of the gas it is engaged i interstate and not intrastate commerce.

It is conceded that should it be first determined tha Appellant's activities within the State of Illinois subse quent to its receipt of the gas from the Panhandle Easter are such as to constitute interstate and not intrastate com merce, then the Illinois Commerce Commission was with out power to enter the order in question and the order is repugnant to and in conflict with the Commerce Clause of the Federal Constitution.

As is evidenced by the other points of this brief, the Appellees' position throughout has been and is that such activities are purely intrastate and not interstate in char acter. Thus it may readily be seen that Appellant's Points II and III merely beg the real issue which is— are such activities interstate or intrastate in character?

IV.

The Order in Question Is Not Repugnant to or in Conflict With the Natural Gas Act, and Is Entirely Consistent With Its Provisions.

Appellant's contention, under Point IV of its brief, that the order of the Illinois Commerce Commission is repugnant to and in conflict with the Natural Gas Act, is likewise predicated entirely upon Appellant's primary assumption that in its activities within the State of Illinois, subsequent to its receipt of the gas from Panhandle Eastern,

Appellant is engaged in interstate and not intrastate commerce.

If this primary assumption falls, the contention advanced by Appellant as its Point IV collapses of its own weight. As we have demonstrated under our Point I, the basic assumption upon which this contention rests is not well founded and is contrary to the facts in this case and the law applicable thereto. Thus viewed the Congress was without power to regulate the purely local activities of the Appellant even had it seen fit to do so.

Furthermore, an examination of the Natural Gas Act itself discloses that Congress, in enacting the legislation relied upon, not only limited the application of the Act to interstate commerce as it is usually considered and excluded intrastate activities of the type here presented but expressly restricted the effect of the Act to gas companies operating between points located in more than one state.

The limitations and exclusions of the Natural Gas Act are as follows:

> SEC. 1 (b). "The provisions of this Act shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural-gas companies engaged in such transportation or sale, but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas."
>
> SEC. 2 (6). " 'Natural-gas company' means a person engaged in the transportation of natural gas in interstate commerce, or the sale in interstate commerce of such gas for resale."
>
> SEC. 2 (7). " 'Interstate commerce' means commerce between any point in a State and any point outside

> thereof, or between points within the same State bu through any place outside thereof, but only insofar a such commerce takes place within the United States.'

It would be difficult to conceive how terms more direct positive and unambiguous than those above could hav been employed to confine the authority of the Federa Power Commission over natural gas companies to thos engaging in commerce across State lines. The language is too plain and comprehensive to admit of construction. In *United States* v. *American Trucking Associations,* 31 U. S. 534, 84 L. ed. 1345, 1351, this Court said:

> "There is, of course, no more persuasive evidence of the purpose of a statute than the words by which the legislature undertook to give expression to its wishes. Often these words are sufficient in and of themselves to determine the purpose of the legislation. In such cases we have followed their plain meaning. (*Taft* v. *Commissioner of Internal Revenue,* 304 U. S. 351, 359; *Helvering* v. *City Bank Farmers Trust Co.,* 296 U. S. 85, 89; *Wilbur* v. *United States,* 284 U. S. 231, 237; *Crooks* v. *Harrelson,* 282 U. S. 55, 60; *United States* v. *Missouri P. R. Co.,* 278 U. S. 269, 279; *George Van Camp & Sons Co.* v. *American Can Co.,* 278 U. S. 245, 253; *Caminetti* v. *United States,* 242 U. S. 470; *Pennsylvania R. Co.* v. *International Coal Min. Co.,* 230 U. S. 184.)"

The fact that Congress not only fixed the limits of the application of the Act but saw fit to expressly interdict its further application, is significant. Congress has expressly declared that the Act "shall not apply to any other transportation or sale" than those in interstate commerce, and by then defining what is "interstate commerce" within the meaning of the Act, thereby prohibited the Act's application even to interstate commerce, unless within the stated definition.

To fall within the definition, the commerce must cross State lines. It must either be from a point in a State to

a point outside, or traverse State lines in moving from point to point in the same State. Whatever its other attributes, unless it crosses State lines it is excluded from the Act's operation; and here, after receipt by Appellant, the gas remains wholly in Illinois.

It probably, in part at least, was a realization of the effect of this limitation in the Act itself that prompted Appellant's endeavor to tie together as a single entirety the entire dealings with and history of the gas from its production to its disposal by Appellant and thereby stretch the interstate character under which the gas is brought into Illinois and there delivered to Appellant into an interstate cover for its operations subsequent to its receiving the gas.

That the attempt must be abortive, is, we submit, clearly established by the decisions of this Court in those cases, heretofore cited, in which such an entirety of movement was, where the facts warranted, separated into its component parts for the purpose of ascertaining which of them were interstate, and which of them intrastate, commerce.

Not only is such separation permitted and required under the decisions of this Court, but the Natural Gas Act itself recognizes that there will occur, and provides that aid may be given therein to State Commissions by the Federal Power Commission, just such situations as that existing in this case where the gathering, transmission and disposal of the gas as a complete entirety involves both transactions which are in interstate commerce over which the Federal Power Commission has jurisdiction and transactions as well which are in intrastate commerce over which the State Commissions have jurisdiction. In such situations the Federal Power Commission is authorized to conduct investigations and make determinations with respect to the interstate portion of the complete entirety,

in order to aid the State Commissions in passing upon its intrastate portion. Section 5(b) provides:

> "The Commission upon its own motion, or upon the request of any State commission, whenever it can do so without prejudice to the efficient and proper conduct of its affairs, may investigate and determine the cost of the production or transportation of natural gas by a natural-gas company in cases where the Commission has no authority to establish a rate governing the transportation or sale of such natural gas."

Further recognition of the fact that the complete entirety of bringing gas into a State and there disposing of it may involve dealings and transactions of which a portion may be interstate and under the control of the Federal Power Commission while another portion may be intrastate and under the control of the State Commission, is given in Section 9(b), where it is provided:

> "The Commission, before prescribing any rules or requirements as to accounts, records, or memoranda, or as to depreciation or amortization rates, shall notify each State commission having jurisdiction with respect to any natural-gas company involved and shall give reasonable opportunity to each such commission to present its views and shall receive and consider such views and recommendations."

Further recognition is also given by the references to State commissions in many of the sections of the Act, particularly in Section 17(b) which provides for joint hearings by the Federal Power Commission and a State commission, thereby contemplating proceedings in which those Bodies cooperate equipollently for the regulation of a complete movement over respective parts of which each Body has its own jurisdiction. Section 17(b) provides:

> "The Commission may confer with any State commission regarding rate structures, costs, accounts, charges, practices, classifications, and regulations of natural-gas companies; and the Commission is authorized, under such rules and regulations as it shall

prescribe, to hold joint hearings with any State commission in connection with any matter with respect to which the Commission is authorized to act. The Commission is authorized in the administration of this chapter to avail itself of such cooperation, services, records, and facilities as may be afforded by any State commission."

Our view of the scope of the Natural Gas Act is further confirmed and strengthened by the Resolution adopted by the National Association of Railroad and Utilities Commissions and presented before a Congressional Committee considering such regulation, quoted by Appellant at pages 57 and 58, which recommended that the then pending legislation

> "* * * be so drawn as in no way to limit or impair the power of the states to regulate intrastate and local service and the rates applicable thereto; * * *."

We submit that the Natural Gas Act is so drawn as to leave the various States free to regulate and control the distribution of natural gas within their respective borders subsequent to the delivery of the gas to such States by the high pressure interstate pipe lines (such as the Panhandle Eastern in the case at bar).

Appellant, under Point IV of its brief, cites various cases for its contention that in such a situation as is here presented the enactment of Federal legislation has precluded the State commissions from acting.

All of these cases may be distinguished on at least two grounds. In the first place, each of these cases dealt with interstate not intrastate commerce and was therefore within the power of the Federal Congress to regulate. In the second place, each of the cited cases dealt with an Act in which the Congress clearly demonstrated that it intended to cover the entire field of action, and that no action by the States would be tolerated.

In the case at bar the Congress has no power to regulate

purely local intrastate transmission of gas. Secondly it has clearly demonstrated, as above shown, that it did not intend to fully occupy the field itself or to exclude State regulation. On the contrary the Act clearly shows that the Congress intended that both State and Federal commissions participate in such regulation.

The first case cited by Appellant, under this point, is *Hines* v. *Davidowitz*, 85 L. Ed. 366. That case does nothing more than to state that there is no rigid formula in this class of cases (which unless we fully agree) and that the primary question is to ascertain whether the local law creates an obstacle in the path of the objective of the Congress. As we have pointed out, the Natural Gas Act, far from prohibiting the States from taking action to regulate the local distribution of gas within such states, expressly provides for such action by the States.

The case of *Alabama & Vicksburg Ry. Co.* v. *Jackson & Eastern Railway Co.*, 271 U. S. 246, 70 L. Ed. 928, is next cited by Appellant. The holding in that case is strictly limited to main line junctions between interstate carriers. Not only is the cited case clearly distinguishable from the case at bar, where purely local intrastate transactions are involved but this Court there expressly recognized this distinction when it pointed out (at page 249) that the Transportation Act excluded from its effect any

> "spur, industrial, team, switching or side tracks, located wholly within one State, or of street, suburban, or interurban electric railways, which are not operated as a part or parts of a general steam railroad system of transportation."

and went on to say that:

> "It is clear that the connection here in question is not a track of this character."

Appellant then cites *O'Brien* v. *Western Union Telegraph Co.*, 113 Fed. (2d) 539. There the transmission of a telegram from Massachusetts to Michigan was involved. Both

sender and receiver were ascertained before the message started on its purely interstate journey. Not only was the commerce purely interstate in character but by the Act in question the Congress had demonstrated that the states were not to participate in the control set up by it.

The case of *Kentucky Natural Gas Corporation* v. *Public Service Commission of Kentucky*, 28 F. Supp. 509, affd. 119 F. (2d) 417, next cited by Appellant, is not applicable to such a situation as is presented by the case at bar. There the Kentucky Commission attempted to regulate directly the activities of the high pressure interstate pipe line and not merely the local company. It would only be analogous to a case where a State Commission might attempt to regulate not only the local Illinois Natural Gas Company but the interstate Panhandle Eastern Pipeline Company itself. That the Court intended to and did restrict the effect of its holding to the high pressure interstate pipe line company is clearly indicated by the following language found on page 513 (of 28 F. Supp.), after the language quoted by Appellant:

> "These conclusions, however, have no reference to the plenary power of the State Commission to regulate the distribution of gas by local distributing companies which purchase their supply at wholesale from the complainant, nor to the power of the Commission to require complainant to disclose to the Commission all information appropriate to any inquiry as to the relations between the complainant and its various wholesale customers, bearing upon the absence of 'an arm's length bargaining' or other facts and circumstances proper to be considered by the Commission in fixing reasonable rates governing local distribution. *Natural Gas Pipeline Co.* v. *Slattery*, 302 U. S. 300, 58 S. Ct. 199, 82 L. Ed. 276; *Arkansas Louisiana Gas Co.* v. *Department of Public Utilities*, 304 U. S. 61, 58 S. Ct. 770, 82 L. Ed. 1149."

This restriction is also evidenced in the Circuit Court of Appeal's two-paragraph memorandum order when it noted that (119 F. (2d) at 417, 418):

> "* * * it clearly appears that appellee is engaged solely in interstate commerce; that its interstate pipe lines from which gas is wholesaled under high pressure to distributing companies and utilities, is an interstate facility through which gas flows into Kentucky from other states, * * *."

Applicant also cites, at page 52, the case of *People ex rel. N. Y. C. R. Co.* v. *Public Service Comm.*, 233 N. Y. 113, 135 N. E. 195, where facts very similar to those in the *Alabama & Vicksburg Ry. Co.* case were presented. The New York Court, in holding that the State Commission was without power to order interstate carriers to construct facilities for the interchange of traffic between the two interstate lines, avoided any attempted to regulate intrastate or local switching when it noted, at page 2 that:

> "The track ordered to be constructed was not a spur, industrial, team, switching or side track, * * *."

Appellant then cites *Erie R. R. Co.* v. *N. Y.*, 233 U. S. 671, 58 L. Ed. 1149, where Congress had, by the Hours of Service Act, expressly regulated the hours of service of employees of interstate railroads. Not only did the Congress have the power to regulate such interstate roads but it was obvious that it intended that no State should thereafter regulate in this field.

The case of *Chicago,, R. I. & P. R. Co.* v. *Hardwicke, Farmers Elev. Co.*, 226 U. S. 426, 57 L. Ed. 284, cited at pages 53 and 54, and *Missouri Pacific R. Co.* v. *Stroud*, 267 U. S. 404, 59 L. Ed. 683, cited at page 55, both dealing with attempts by States to regulate the furnishing of cars for the handling of interstate shipments, are to be distinguished in the same manner.

At pages 57 and 58, Appellant quotes at length from a certain resolution adopted by the National Association of Railroad and Utilities Commissions. As we have pointed out heretofore the resolution referred to, far from sustaining Appellant's position, clearly demonstrates that our position is the only sound position possible in view of the background and language of the Act.

We submit that none of the above authorities are such as to sustain Appellant's contentions in the case at bar.

Much of Appellant's argument under Point IV consists of repeated assertions to the effect that the Appellant will be forced to serve two masters with respect to the same subject matter, that action by the Federal Power Commission must necessarily be repugnant to and exclude any action by the State Commissions, that the order of the Illinois Commission will result in the Appellant's extending its gas into fields already occupied by other natural gas companies, etc.

All of these supposed difficulties are conjured up by Appellant's basic premise that the transmission of natural gas from the wells to the ultimate consumers must be treated as one single subject matter and cannot be broken down into its interstate and intrastate elements. As heretofore demonstrated this initial premise is false.

If the transmission of gas is divided into its interstate and intrastate elements, there is no conflict. The Federal Power Commission, under the Act, is in complete charge of the great interstate pipe lines and determines into which states of the Union such interstate lines shall be extended and the prices to be charged by these carriers. Once such interstate pipe lines have delivered their gas to the local intrastate companies, for redistribution wholly within such states, however, the power of the Federal Commission is at an end.

From that point on the local State Commissions take over the work of determining to whom, and at what rates, the local companies shall redistribute such gas.

So viewed there is no conflict. A careful examination of the Natural Gas Act, as we have said, plainly discloses that such a division of power was intended and provided for.

This view of the subject seems eminently fair and reasonable to us. The Federal Commission is well equipped to judge which of the states should have interstate gas piped to them but the local State Commission's are, we submit, best suited to determine the local recipients of such gas and the price to be paid for it as resold locally.

Appellant's argument that economically undesirable competition between gas companies may result from State regulation is not sound. Illinois, for example, now produces considerable quantities of natural gas locally and this locally produced gas is subject to the control of the Illinois Commission and not of the Federal Commission. Thus the Illinois Commission has, in fact, a far better opportunity to understand and properly regulate the local distribution of gas in Illinois than has the Federal Commission and is in a far better position to avoid ruinous competition among gas companies.

Concluding our argument under this point, we submit that the order in question is not only not repugnant to or in conflict with the Natural Gas Act but that if the transmission of natural gas from the wells to the ultimate consumers is supervised and controlled in part by the Federal Commission and in part by the various State Commissions, as is expressly provided for under the said Act, the welfare of the nation will be best served.

We submit that so viewed the control of the Panhandle Eastern Pipe Line Company, in the case at bar, should

rest in the hands of the Federal Power Commission, and that the control of the activities of the Illinois Natural Gas Company, subsequent to its receipt of the gas from the Panhandle Eastern, should remain in the Illinois Commerce Commission, where it has heretofore been.

Conclusion.

In view of the above we respectfully submit that the transmission of natural gas from the wells in the Texas Panhandle to the ultimate consumers in Central Illinois need not be treated as one continuous transaction; that the interstate character of this transmission terminates upon the delivery of such gas to the appellant within the State of Illinois; that Appellant's subsequent activities, in selling and delivering this gas to consumers wholly within the State of Illinois, do not constitute interstate commerce; that over such activities the Illinois Commerce Commission, under the Illinois statute, has jurisdiction; that such an order as was here entered is not repugnant to or in conflict with the commerce clause of the Federal Constitution or the Federal Natural Gas Act; that the order in question would even be proper under the provisions of the Natural Gas Act which provides for Federal control of such activities as are carried on in the case at bar by the Panhandle Eastern Pipe Line Company and for state control of such activities as are carried on in the case at bar by the Appellant, Illinois Natural Gas Company; and that such combined Federal control of the large interstate pipe lines and State control of the local distribution of such gas is for the best interests of the Nation in that each of such separate subject matters would be under the control of that body best equipped properly to determine the matters coming within its own peculiar jurisdiction.

We, therefore, respectfully pray that the judgment of the court below be in all respects affirmed.

Respectfully submitted,

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of Counsel.

No. 100

In the Supreme Court of the United States

OCTOBER TERM, 1941

ILLINOIS NATURAL GAS COMPANY, APPELLANT

v.

CENTRAL ILLINOIS PUBLIC SERVICE COMPANY AND ILLINOIS COMMERCE COMMISSION, APPELLEES

APPEAL FROM THE SUPREME COURT OF ILLINOIS

MEMORANDUM OF THE FEDERAL POWER COMMISSION AS AMICUS CURIAE IN SUPPORT OF JURISDICTION ON APPEAL

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MEMORANDUM OF THE FEDERAL POWER COMMISSION AS AMICUS CURIAE IN SUPPORT OF JURISDICTION ON APPEAL

This case involves a question of large importance to the Federal Power Commission in its administration of the Natural Gas Act of 1938 (52 Stat. 821, 15 U. S. C. sec. 717–717w). Although presented by the appellant, and preserved in the lower courts, we think the clarity of its presentation may be advanced by this memorandum.

1. The Illinois Commerce Commission ordered the appellant to extend its facilities and supply natural gas to the appellee company. This extension of facilities requires the construction of a lateral line from the main transmission line of the

Panhandle Eastern Natural Gas Company at or near Tuscola, Illinois, to the appellee company's facilities at or near Mattoon, Illinois, a distance of approximately 18 miles. At present, the appellee company is supplied with natural gas for the towns of Mattoon, Paris, and Effingham, Illinois, by the Universal Gas Company. Both appellant and the Universal Gas Company are subject to the Natural Gas Act.[1] Section 7 (c) of the Natural Gas Act of 1938, provides in part as follows:

> (c) No natural gas company shall undertake the construction or extension of any facilities for the transportation of natural gas to a market in which natural gas is already being served by another natural gas company, or acquire or operate any such facilities or extensions thereof, or engage in transportation by means of any new or additional facilities, or sell natural gas in any such market, unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity require or

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[1] Section 2 (6) of the Act defines "natural gas company" as "a person engaged in the transportation of natural gas in interstate commerce, or the sale in interstate commerce of such gas for resale." Appellant meets this definition through the facts shown at pp. 3–5 of its Statement as to Jurisdiction. The Universal Gas Company purchases its gas at Terre Haute, Indiana, transmits it to the Illinois-Indiana state line and there sells it to the Central Illinois Public Service Company for resale in Illinois (R. 88, 89, 97, 122, 124–125, 128).

> will require such new construction or operation of any such facilities or extensions thereof * * *.

Compliance with the order of the Illinois Commerce Commission will mean that the appellant will extend its facilities into a market already served by another natural gas company, without a certificate of public convenience and necessity from the Federal Power Commission as required by section 7 (c) of the Act.

2. The appellant's answer before the Illinois Commerce Commission raised section 7 (c) of the Natural Gas Act (R. 22);[2] the Commission ruled that the Federal Power Commission, whatever the terms of the Act, was without jurisdiction (R. 166). The petition for rehearing before the Commission claimed that the order was invalid because of the necessity of obtaining a certificate of convenience and necessity from the Federal Power Commission (R. 176). The same issue was presented to the Circuit Court of Coles County, Illinois (Statement as to Jurisdiction, p. 8). The effect of section 7 (c), in making the order of the Commerce Commission inoperative until a certificate of public convenience and necessity was obtained from the Federal Power Commission, was assigned as error (No. 3) to the Supreme Court of Illinois and was briefed by appellant (pp. 21–23). The opinion of

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[2] Record references are to the transcript, as indicated by appellant's abstract filed in the Supreme Court of Illinois.

the Supreme Court of Illinois does not in terms deal with the scope of section 7 (c), but holds merely that the Federal Power Commission does not have *exclusive* jurisdiction (Statement as to Jurisdiction, pp. 27–28). However, the court, in sustaining the validity of the order of the Illinois Commerce Commission, necessarily overruled the claim of conflict with the federal statute. The issue, finally, is presented by the Statement as to Jurisdiction (p. 11).

We therefore respectfully submit that this appeal involves a substantial federal question, raised before and decided by the state courts.

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SEPTEMBER 1941.

U. S. GOVERNMENT PRINTING OFFICE: 1941

No. 100

In the Supreme Court of the United States

OCTOBER TERM, 1941

ILLINOIS NATURAL GAS COMPANY, APPELLANT

v.

CENTRAL ILLINOIS PUBLIC SERVICE COMPANY AND ILLINOIS COMMERCE COMMISSION, APPELLEES

APPEAL FROM THE SUPREME COURT OF ILLINOIS

MEMORANDUM OF THE FEDERAL POWER COMMISSION, AMICUS CURIAE

In the Supreme Court of the United States

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CENTRAL ILLINOIS PUBLIC SERVICE COMPANY AND ILLINOIS COMMERCE COMMISSION, APPELLEES

APPEAL FROM THE SUPREME COURT OF ILLINOIS

MEMORANDUM OF THE FEDERAL POWER COMMISSION, AMICUS CURIAE

The Federal Power Commission submits this memorandum to emphasize that the question presented in the case is of first importance to its jurisdiction under, and its administration of, the Natural Gas Act of 1938 (52 Stat. 821, 15 U. S. C., Supp. V, Sec. 717–717w).[1]

The facts relating to the appellant's operations and the argument concerning whether it trans-

[1] The question here presented is similarly of importance to the Commission in its administration of the Federal Power Act, 46 Stat. 797, 16 U. S. C., Secs. 791–825.

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ports or sells natural gas in interstate commerce so as to constitute it a natural gas company within the meaning of Section 2 (6) of the Natural Gas Act are fully treated in appellant's brief. We think it important to point out, however, that the holding of the court below that appellant is in intrastate commerce only and not subject to the jurisdiction of the Federal Power Commission would seriously hamper the Commission in its administration of the Act.

The Natural Gas Act of 1938 establishes a comprehensive system of regulation of the transportation and sale of natural gas in interstate and foreign commerce.[2] It seems clear that effective

[2] The transportation and sale of natural gas is declared by Congress to be "affected with a public interest" and its regulation by the federal government is declared to be "necessary in the public interest" (Section 1 (a)). The provisions of the Act apply to the transportation and sale for resale of natural gas in interstate commerce and to "natural-gas companies" (Sec. 1 (b)), as defined in the Act (Sec. 2 (6)). The Act forbids the importation and exportation of natural gas without authority from the Commission (Sec. 3). It provides for regulation of rates and services of natural-gas companies (Secs. 4, 5), ascertainment of cost of property (Sec. 6), control over the extension and abandonment of facilities (Sec. 7), the prescribing of accounts to be kept by natural-gas companies (Sec. 8), determination of rates of depreciation (Sec. 9), the requiring of periodic and special reports by natural-gas companies (Sec. 10), and the making of reports to Congress on proposed state compacts relating to the conservation of natural gas (Sec. 11). Dealings in securities of natural-gas companies by their officials for personal profit are made unlawful (Sec. 12). Provision is made for the filing of complaints by a state, municipality, or state

regulation of the matters confided to the Commission by Congress requires the Commission's assumption of jurisdiction over companies such as appellant.[3] The transportation of gas in the instant case from the sources of supply outside Texas and Kansas to the connections of appellant with the lines of the distributing companies and industrial concerns constitutes an "unbroken chain, fundamentally interstate from beginning to end." *Missouri* v. *Kansas Gas Co.*, 265 U. S. 298, 309. Local distribution of such gas does not commence until after its delivery by appellant. If the power of the Federal Power Commission ends at the state line or at a point within the state where gas is received for further transportation and sale at wholesale for ultimate consumption within the state, unified and integrated regu-

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commission charging violations of the Act (Sec. 13). Powers to investigate (Sec. 14), issue subpoenas (Sec. 14), hold hearings (Sec. 15), adopt rules of practice, and promulgate regulations (Sec. 16), are given the Commission. The Commission is directed to cooperate with states and state commissions in the administration of the Act, and provision is made for the use of boards composed of representatives of a state or states, who may exercise the powers of members of the Commission when designated by the Commission to hold hearings (Sec. 17). The Act contains procedural provisions for rehearings and judicial review on petition to the Circuit Courts of Appeals and the Court of Appeals for the District of Columbia (Sec. 19). Sanctions for violations of the Act and the orders and regulations of the Commission are also provided (Secs. 20, 21, 22).

[3] See the appellant's brief, pp. 55–58.

lation of the rates and other matters entrusted to the Commission would be frustrated.[4]

It is further plain that if appellant is a natural-gas company within the meaning of Section 2 (6) of the Act, the order of the Illinois Commerce Commission requiring appellant to extend its facilities is in direct conflict with Section 7 (c) of the Natural Gas Act. Section 7 (c) prohibits any natural-gas company from extending its facilities to a market in which natural gas is already being served by another natural-gas company. The Illinois Commerce Commission ordered appellant to extend its facilities to a market already being so served.[5] Whatever the difficulties of the doctrine of supersedure of state police power by federal laws in the absence of express Congressional provision, the situation presented here is one of direct and positive conflict. The Illinois Commerce Commission has ordered appellant to do that which Congress, by Section 7 (c) of the

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[4] Congress contemplated extending federal jurisdiction into the states and expressly provided for cooperation by the Commission with the states in order that local needs would be fully considered. See Section 17 of the Act.

[5] The evidence shows that Central, appellee herein, is supplied with its gas by the Universal Gas Company, which purchases it in Indiana, and transmits the same to the Illinois-Indiana state line, where it sells the gas to Central for resale (R. 34, 35, 36, 37–38, 42, 43). Universal Gas Company is, therefore, a natural-gas company within the meaning of Section 2 (6) of the Act. Consequently, the distribution system of Central is within a market already being served by another natural-gas company within the meaning of Section 7 (c).

Natural Gas Act has forbidden appellant to do, i. e., to extend its facilities without first obtaining a certificate of convenience and necessity from the Federal Power Commission. Clearly appellant cannot obey both the Illinois Commerce Commission and Congress; it must, therefore, obey the paramount power, which under the Constitution is the federal law. Art. 6, cl. 2; *Gibbons* v. *Ogden*, 9 Wheat. 1.

We therefore respectfully submit that Illinois Natural Gas Company is a natural-gas company within the meaning of the Natural Gas Act, and that the order of the Illinois Commerce Commission is in conflict with Section 7 (c) of the Act and is therefore invalid.

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DECEMBER 1941.

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p. 2, 6, 7

SUPREME COURT OF THE UNITED STATES.

No. 100.—October Term, 1941.

Illinois Natural Gas Company, Appellant, *vs.* Central Illinois Public Service Company and Illinois Commerce Commission.	Appeal from the Supreme Court of the State of Illinois.

[January 5, 1942.]

Mr. Chief Justice Stone delivered the opinion of the Court.

On complaint of appellee, Central Illinois Public Service Company, which is engaged in the distribution of natural gas to consumers in various cities and towns in Illinois, appellee, Illinois Commerce Commission, made its order requiring appellant, Illinois Natural Gas Company, to supply the Central Company with natural gas and to establish the pipe line connection necessary for that purpose. In the proceedings before the Commission, appellant contended that its entire operations and business in Illinois constitute interstate commerce and challenged the Commission's exercise of its jurisdiction and its order, as in conflict with the commerce clause and the provisions of the Natural Gas Act, 52 Stat. 821-833, 15 U. S. C. §§717-717w. Section 7(c), 15 U. S. C. § 717f(c), it was contended, prohibits such extension of facilities and sale of gas to distributors without a certificate of public convenience and necessity from the Federal Power Commission.

On review the Illinois Circuit Court sustained the order and the Illinois Supreme Court affirmed, 375 Ill. 634, holding that the activities of appellant affected by the Commission's order constitute intrastate commerce, to which the provisions of the Natural Gas Act do not apply, and that those activities are, therefore, subject to state regulation. The case comes here on appeal under § 237 of the Judicial Code as amended, 28 U. S. C. § 344(a).

Appellant, an Illinois corporation, is a wholly owned subsidiary of Panhandle Eastern Pipe Line Company, which owns and op-

erates a natural gas pipe line system extending from gas fields in Texas, Kansas and Oklahoma across Illinois and into Indiana. Appellant owns a pipe line system wholly in Illinois, whose transmission pipe lines connect at various points in Illinois with the main line of Panhandle Eastern. Appellant by long term contract purchases its supply of gas from Panhandle Eastern and transports it through its own lines to local gas distributing utilities in Illinois to which it sells the gas for distribution to consumers in Illinois cities and towns. It also sells and delivers gas to several industrial consumers in the state. The gas moves continuously, under pressure applied by Panhandle, from the gas fields until it enters appellant's transmission lines where appellant reduces the pressure according to the needs of its service. After the reduction of pressure the gas continues to move in appellant's lines until it passes into the service pipes of the local distributors, or industrial users, where the pressure is again substantially reduced. The Central Illinois Public Service Company is distributing natural gas to consumers in several Illinois towns and cities, which it purchases for resale from Universal Gas Company, and takes from the pipe line of the latter at the Illinois state line. Universal in turn acquires the gas in Indiana from Panhandle Eastern, and from Kentucky Natural Gas Company.

The Illinois Commission found that appellant's operation in the sale of the gas to distributors in the state are wholly intrastate commerce; that the supply of gas capable of passing through Central's pipe line is inadequate to supply the Illinois communities served by it. The Commission then ordered appellant to extend its pipe line so as to connect with Central's pipe line system and to supply gas in sufficient quantities to enable it to satisfy the needs of its customers.

That appellant and Panhandle Eastern are engaged in interstate commerce in the purchase and sale of the natural gas which moves in a continuous stream from points without the state into appellant's pipes within the state seems not to be open to question. *Missouri* v. *Kansas Gas Company*, 265 U. S. 298; *Ozark Pipe Line Corp.* v. *Monier*, 266 U. S. 555; *Peoples Gas Co.* v. *Public Service Commission*, 270 U. S. 550; *State Tax Commission* v. *Gas Company*, 284 U. S. 41. Pursuant to the mutual agreement of the two companies the gas is transported in continuous movement through the pipe line into the state and through appellant's pipes to the service

lines of the distributors where appellant delivers it to them. In such a transaction the particular point at which the title and custody of the gas passes to the purchaser without arresting its movement to the intended destination does not affect the essential interstate nature of the business. See *Peoples Gas Co.* v. *Public Service Commission, supra,* 554; *Pennsylvania* v. *West Virginia,* 262 U. S. 553, 587; *United Fuel Gas Co. v. Hallanan,* 257 U. S. 277, 280-281.

But appellee argues, as the State Supreme Court held, that although the sale of the gas and its movement into the state is interstate commerce, that commerce comes to an end when appellant reduces the gas pressure before its delivery into the service pipes of the distributors. In consequence it is asserted the sale of the gas to the distributors is intrastate commerce subject to state regulation by the Commission's order, and is therefore not within the purview of the Natural Gas Act, which is said to be applicable only to interstate commerce.

This Court has held that the retail sale of gas at the burner tips by one who pipes the gas into the state, or by one who is a local distributor acquiring the gas from another who has similarly brought it into the state, is a sale in intrastate commerce, since the interstate commerce was said to end upon the introduction of the gas into the service pipes of the distributor. *Public Utilities Commission* v. *Landon,* 249 U. S. 236; *East Ohio Gas Co.* v. *Tax Commission,* 283 U. S. 465. In applying this mechanical test for determining when interstate commerce ends and intrastate commerce begins this Court has held that the interstate transportation and the sale of gas at wholesale to local distributing companies is not subject to state control of rates, *Missouri* v. *Kansas Gas Co., supra;* see *Public Utilities Commission* v. *Landon, supra,* 245; cf. *Public Utilities Commission* v. *Attleboro Co.,* 273 U. S. 83, 89, or to a state privilege tax, *State Tax Commission* v. *Gas Company, supra.* Yet state regulation of local retail rates to ultimate consumers has been sustained where the gas so distributed was purchased at wholesale from one who had piped the gas into the state, *Public Utilities Commission* v. *Landon, supra,* as has a state tax measured by receipts from local retail sales of gas by one who has similarly brought the gas into the state. *East Ohio Gas Co.* v. *Tax Commission, supra.*

In other cases the Court, in determining the validity of state regulations, has been less concerned to find a point in time and space where the interstate commerce in gas ends and intrastate commerce begins, and has looked to the nature of the state regulation involved, the objective of the state, and the effect of the regulation upon the national interest in the commerce. Cf. *South Carolina Highway Dept.* v. *Barnwell Bros.*, 303 U. S. 177, 185, 187, *et seq.*; *California* v. *Thompson*, 313 U. S. 109, 113, 114; *Duckworth* v. *Arkansas*, No. 43, decided this term. Thus, in *Pennsylvania Gas Co.* v. *Public Service Commission*, 252 U. S. 23, where natural gas was transported by pipe line from one state into another and there sold directly to ultimate local consumers, it was held that, although the sale was a part of interstate commerce, a state public service commission could regulate the rates for service to such consumers. While the Court recognized that this local regulation would to some extent affect interstate commerce in gas, it was thought that the control of rates was a matter so peculiarly of local concern that the regulation should be deemed within state power. Cf. *Arkansas Louisiana Gas Co.* v. *Dept. of Public Utilities*, 304 U. S. 61. And, similarly, this Court has sustained a non-discriminatory tax on the sale to a buyer within the taxing state of a commodity shipped interstate in performance of the sales contract, not upon the ground that the delivery was not a part of interstate commerce, see *East Ohio Gas Co.* v. *Tax Commission*, *supra*, but because the tax was not a prohibited regulation of or burden on that commerce. *Wiloil Corporation* v. *Pennsylvania*, 294 U. S. 169; *McGoldrick* v. *Berwind-White Co.*, 309 U. S. 33, 50. *In Southern Gas Corp.* v. *Alabama*, 301 U. S. 148, 156-57, on which the Illinois Supreme Court relied, we held only that the sale of gas to a local industrial consumer by one who was piping the gas into the state was a local business sufficient to sustain a franchise tax on the privilege of doing business within the state, measured by all the taxpayer's property located there, including that used for wholesale distribution of gas to local public service companies.

In the absence of any controlling act of Congress we should now be faced with the question whether the interest of the state in the present regulation of the sale and distribution of gas transported into the state balanced against the effect of such control on the commerce in its national aspect, is a more reliable touchstone for ascertaining state power than the mechanical distinctions on which appellee relies. But we are under no necessity of making that

choice here for Congress, by the Natural Gas Act, has brought under national control the very matters which the state has undertaken to regulate by the order.

An avowed purpose of the Natural Gas Act of June 21, 1938, was to afford, through the exercise of the national power over interstate commerce, an agency for regulating the wholesale distribution to public service companies of natural gas moving interstate, which this Court had declared to be interstate commerce not subject to certain types of state regulation. H. R. No. 709, Committee on Interstate and Foreign Commerce, 75th Cong., 1st Sess., April 28, 1937.[1] By its enactment Congress undertook to regulate a defined class of natural gas distribution without the necessity, where Congress has not acted, of drawing the precise line between state and federal power by the litigation of particular cases. By § 1(b), 15 U. S. C. § 717(b), the Act is restricted in its application "to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural-gas companies engaged in such transportation or sale . . . . " And by § 2(6), 15 U. S. C. § 717a(6) "natural-gas company" means a person [including a corporation] engaged in the transportation of natural gas in interstate commerce or the sale in interstate commerce of such gas for resale. Sections 4, 5, 6, 15 U. S. C. § 717c, d, e, give the Federal Power Commission extensive control over the rates at which the gas is sold for resale. Under § 7(a), 15 U. S. C. § 717f(a) the Com-

[1] The Committee said of the proposed bill:

"It confers jurisdiction upon the Federal Power Commission over the transportation of natural gas in interstate commerce, and the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use. The States have, of course, for many years regulated sales of natural gas to consumers in intrastate transactions. The States have also been able to regulate sales to consumers even though such sales are in interstate commerce, such sales being considered local in character and in the absence of congressional prohibition subject to State regulation. (See Pennsylvania Gas Co. *v.* Public Service Commission (1920), 252 U. S. 23.) There is no intention in enacting the present legislation to disturb the States in their exercise of such jurisdiction. However, in the case of sales for resale, or so-called wholesale sales, in interstate commerce (for example, sales by producing companies to distributing companies) the legal situation is different. Such transactions have been considered to be not local in character and, even in the absence of Congressional action, not subject to State regulation. (See Missouri *v.* Kansas Gas Co. (1924), 265 U. S. 298, and Public Service Commission *v.* Attleboro Steam & Electric Co. (1927) 273 U. S. 83.) The basic purpose of the present legislation is to occupy this field in which the Supreme Court has held that the States may not act."

mission has authority to order natural-gas companies to extend their systems to establish physical connections of their transportation facilities with those of distributors and to sell gas to them. Section 7(b) prohibits the abandonment of the facilities of natural-gas companies without approval of the Commission. Section 7(c), here involved, provides that "No natural-gas company shall undertake the construction or extension of any facilities for the transportation of natural gas to a market in which natural gas is already being served by another natural-gas company, or acquire or operate any such facilities or extensions thereof, or engage in any transportation by means of any new or additional facilities, or sell natural gas in any such market", without the Federal Commission's certificate of public convenience and necessity.

We think it plain that these provisions, read in the light of the legislative history, were intended to bring under federal regulation wholesale distribution, like that of appellant, of gas moving interstate. Appellant engages in interstate commerce in gas and in its interstate transportation as those terms had been defined by this Court, before the adoption of the Act. After the gas is brought into the state appellant makes the first sale to distributors for resale, to which the Act in terms applies, and which the cases last mentioned defined as a part of the commerce subject in some respects to the exclusive regulation of Congress. Cf. *Parker* v. *Motor Boat Sales, Inc.*, No. 46, decided this term. Section 7 of the Act commits to the Federal Commission the control of extensions and abandonment of the transportation facilities of natural-gas companies, their physical connection with those of distributors and sales to distributors, and prohibits extensions, such as the state commission has now ordered, into an area already served by another natural-gas company, unless the Commission has first granted a certificate of public convenience and necessity. Since the communities here are supplied by the Universal and Central companies, which transport the gas interstate, they constitute a market already served by a natural-gas company within § 7(c) and § 2(6) of the Act.

The Federal Commission has ruled that it has jurisdiction under the Act over companies which, like appellant, sell at wholesale to local distributors gas moving interstate. *Re Billings Gas Company*, 35 P. U. R. (N. S.) 321; *Re East Ohio Gas Company*, 28 P. U. R. (N. S.) 129. The proceedings of the Commission under § 7(c)

indicate the many important matters which it takes into consideration in determining whether an extension of facilities in a case such as this should be permitted.[2]

In determining the scope of the federal power over the proposed extension of facilities and sale of gas it is unnecessary to scrutinize with meticulous care the physical characteristics of appellant's business, in order to ascertain whether, as the court below held, the interstate commerce involved in bringing the gas into the state ends before delivery to distributors. In any case the proposed extension of appellant's facilities is so intimately associated with the commerce and would so affect its volume moving into the state and distribution among the states as to be within the Congressional power to regulate those matters which materially affect interstate commerce, as well as the commerce itself. *Southern Ry. Co.* v. *United States*, 222 U. S. 20; *Houston E. & W. Texas Ry. Co.* v. *United States*, 234 U. S. 342; *Railroad Comm'n of Wisconsin* v. *Chicago, Burlington & Quincy Ry. Co.*, 257 U. S. 563; see *United States* v. *Darby*, 312 U. S. 100, 119-120.

As Congress, by § 7(a)(c) of the Act has given plenary authority to the Federal Commission to regulate extensions of gas transportation facilities and their physical connection with those of distributors, as well as the sale of gas to them, and since no certificate of public convenience and necessity, required by § 7(c), has been granted to appellant by the Federal Commission for the proposed extensions and sale, the state commission was without power to order them.

Reversed.

Mr. Justice ROBERTS took no part in the consideration or decision of this case.

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[2] In In re Kansas Pipe Line & Gas Co., No. G-106 and In re North Dakota Consumers Gas Co., No. G-119, October 24, 1939, it inquired:

(1) whether the applicant possessed a supply of natural gas adequate to meet those demands which it was reasonable to assume would be made upon it; (2) whether there existed in the territory proposed to be served customers who could reasonably be expected to use such gas service; (3) whether the facilities proposed to be constructed would be adequate to meet the estimated demands for gas in the area; (4) whether applicant possessed adequate financial resources with which to construct the facilities proposed; (5) whether the cost of construction of the facilities proposed was adequate and reasonable; (6) whether anticipated fixed charges were reasonable; (7) whether the rates proposed to be charged were reasonable, comparing in that connection the proposed rates with those of other natural-gas companies already serving the territory.